

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Claimant

Reg. No.: 2008-28340

Issue No.: 2009; 4031

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

November 17, 2008

Macomb County DHS (12)

ADMINISTRATIVE LAW JUDGE: Judith Ralston Ellison

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; and MCL 400.37 upon Claimant's request for a hearing. After due notice, a hearing was held on November 17, 2008. The Claimant and her step mother, [REDACTED] appeared at the Department of Human Services (Department) in Macomb County District 12.

Record was left open to obtain new medical records; and Interim Order was issued. Only medical records of EMG testing were received. The record closed; and this matter is now before the undersigned for final decision.

ISSUES

Whether the Department properly determined the Claimant is 'not disabled' for purposes of Medical Assistance based on disability (MA-P), retroactive MA-P and State Disability Assistance (SDA) program?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) On May 30, 2008 the Claimant applied for MA-P and SDA.
- (2) On June 28, 2008 the Department denied the application; and on August 26, 2008 the State Hearing Review Team (SHRT) denied the application finding medical evidence supported a capacity to perform past relevant work.
- (3) On July 30, 2008 the Claimant filed a timely hearing request to protest the Department's determination.
- (4) Claimant's date of birth is [REDACTED]; and the Claimant is fifty-five of age.
- (5) Claimant completed grade 12 and two years of college; and can read and write English and perform basic math skills.
- (6) Claimant last worked in January 2007 as a medical assistant, administrative assistant in financial aid with [REDACTED] for 15 years; and hairdressing and owning a shop.
- (7) Claimant has alleged a medical history of non-insulin dependent diabetes mellitus (NIDDM) neuropathy of both right and left feet and hands, back pain from degenerative disk disease and hypertension.
- (8) March 2008, in part:

CURRENT DIAGNOSIS: Diabetic neuropathy.
HT: 64', WT: 219, BP 128/72. Right hand dominant.

NORMAL EXAMINATION AREAS: General; HEENT;
Respiratory, Cardiovascular, Abdominal, Musculoskeletal, Mental.

FINDINGS: Neuro: neuropathy.

CLINICAL IMPRESSION: Stable.

PHYSICAL LIMITATIONS: Lifting/carrying up to 10 pounds 2/3 of 8 hour day; up to 20 pounds 1/3 of 8-hour day, never 25 or over; stand and/or walk at least 2-hours in 8-hour day; no assistive devices are needed; use of both hand/arms for simple grasping, reaching, pushing/pulling, fine manipulating; use of both feet/legs for operating controls.

MENTAL LIMITATIONS: None. Medications: Neurotin, Zocar, Metform, Ultrex, Lisinopril, Loped. [REDACTED]
[REDACTED] Department Exhibit (DE) 1, pp. 6-7.

(9) March 2009, in part:

EMG: Examination of 8 different muscles of each of the two upper extremities showed no denervation, normal insertional cavity, normal recruitment and interference. IMPRESSION: Mild to moderate CTS right hand, mild bilateral demyelinating ulnar motor neuropathy, redness and heat both hands noted. DIAGNOSIS: Moderate to severe Reflex Sympathetic Dystrophy. [REDACTED]
[REDACTED] DE N, pp. 1-3.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.1 *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Federal regulations require that the department use the same operative definition for ‘disabled’ as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a)

‘Disability’ is:

. . . the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months
. . . 20 CFR416.905

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity; the severity of impairment(s); residual functional capacity, and vocational factors (i.e., age, education, and work

experience) are assessed in that order. A determination that an individual is disabled can be made at any step in the sequential evaluation. Then evaluation under a subsequent step is not necessary.

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity (SGA). 20 CFR 416.920(b) In this case, under the first step, Claimant testified to not performing SGA since January 2007. Therefore, Claimant is not disqualified for MA at step one in the evaluation process.

Second, in order to be considered disabled for purposes of MA, a person must have a 'severe impairment' 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual's physical or mental ability to perform basic work activities. Basic work activities mean the abilities and aptitudes necessary to do most jobs. Examples include:

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. The court in *Salmi v Sec'y of Health and Human Servs*, 774 F2d 685 (6th Cir 1985) held that an impairment qualifies as "non-severe" only if it "would not affect the

claimant's ability to work," regardless of the claimant's age, education, or prior work experience." *Id.* At 691-92. Only slight abnormalities that minimally affect a claimant's ability to work can be considered non-severe. *Higgs v Bowen*, 880 F2d 860, 862 (6th Cir. 1988); *Farris v Sec'y of Health & Human Servs*, 773 F2d 85, 90 (6thCir 1985).

In this case, the Claimant has presented medical evidence to support a finding that Claimant had physical limitations that are more than minimal and impact basic work activities. The Claimant's physical impairments meet the duration period. See finding of facts 8-9. There was no medical evidence of a mental impairment impacting basic work activities.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Based on the hearing record, the undersigned finds that the Claimant's medical record will not support findings that the Claimant's impairment is a "listed impairment(s)" or equal to a listed impairment. 20 CFR 416.920(a) (4) (iii) According to the medical evidence, alone, the Claimant cannot be found to be disabled.

Appendix I, Listing of Impairments (Listing) discusses the analysis and criteria necessary to a finding of a listed impairment. The undersigned's decision was based on Listing 11.14 *Peripheral neuropathies*: is met when there is disorganization of motor function that is significant and persistent in two extremities resulting in sustained disturbance of gross and dexterous movements, or in gait and station. The Claimant does not meet this listing based on the medical record from Health One Medical Center; and the signature was illegible. The doctor did not limit the Claimant's use of either hand/arm or either foot/leg from the ability to perform both fine and gross motor activities. There were no limitations of use of either lower extremity. See finding of fact 8.

In this case, this Administrative Law Judge finds the Claimant is not presently disabled at the third step for purposes of the Medical Assistance (MA) program because the medical evidence does not meet the intent or severity of the listings. Sequential evaluation under step four or five is necessary. 20 CFR 416.905

In the fourth step of the sequential evaluation of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevent him from doing past relevant work. 20 CFR 416.920(e) Residual functional capacity (RFC) will be assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what you can do in a work setting. RFC is the most you can still do despite your limitations. All the relevant medical and other evidence in your case record applies in the assessment.

The Claimant's past relevant work was as a medical assistant but she had 15 years knowledge of the issues of financial aid. The evidence supports the Claimant was laid off from this work due to a change in ownership.

The Claimant testified to being unable to return to recent past relevant work because her hands prevent typing and taking patient pulses. The undersigned accepts this testimony and decides the undersigned will not return the Claimant to past relevant work. But the undersigned notes the Claimant was able to use her hands to complete the application.

In the fifth step of the sequential evaluation of a disability claim, the trier of fact must determine: if the claimant's impairment(s) prevent him/her from doing other work. 20 CFR 416.920(f) This determination is based on the claimant's:

- (1) "Residual functional capacity," defined simply as "what can you still do despite you limitations," 20 CFR 416.945;
- (2) Age, education, and work experience, and

- (3) The kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her limitations.

20 CFR 416.960. *Felton v DSS*, 161 Mich App 690, 696-697, 411 NW2d 829 (1987)

It is the finding of the undersigned, based upon the medical evidence, objective physical findings, and hearing record that Claimant's RFC for work activities on a regular and continuing basis is functionally limited to sedentary work. Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines 20 CFR 416.967(a):

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Claimant at sixty is considered *advanced age*; a category of individuals age 55 and over. Under Appendix 2 to Subpart P: Table No. 4—Residual Functional Capacity: Maximum Sustained Work Capability Limited to Sedentary Work as a Result of Severe Medically Determinable Impairment(s), Rule 201.15, for advanced age, age 55 and over; education: high school—or more does not provide for direct entry into skilled work; previous work experience, skilled or semi-skilled—skills transferable [Financial aid knowledge]; the Claimant is “not disabled” per Rule 201.15.

It is the finding of the undersigned, based upon the medical data and hearing record that Claimant is “not disabled” at the fifth step.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 1939 PA 280, as amended. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.1 et seq., and MAC R 400.3151-400.3180. Department policies are found

in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI or RSDI benefits based on disability or blindness or the receipt of MA benefits based on disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in PEM 261.

In this case, there is insufficient medical evidence to support a finding that Claimant's impairments meet the disability requirements under SSI disability standards, and prevents other work activities for ninety days. This Administrative Law Judge finds the Claimant is 'not disabled' for purposes of the SDA program.

DECISION AND ORDER

The Administrative Law Judge, based on the findings of fact and conclusions of law, decides that the Claimant is 'not disabled' for purposes of the Medical Assistance program and the State Disability Program.

It is ORDERED; the Department's determination in this matter is AFFIRMED.

/s/

Judith Ralston Ellison
Administrative Law Judge
For Ishmael Ahmed, Director
Department of Human Services

Date Signed: 03/27/09

Date Mailed: 03/27/09

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

JRE/jlg

cc:

