

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: 2008-28703

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

November 17, 2008

Branch County DHS

ADMINISTRATIVE LAW JUDGE: Rhonda P. Craig

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 telephone hearing was held on November 17, 2008. Claimant was not represented.

ISSUE

Is claimant disabled for the purposes of the Medical Assistance and State Disability Assistance programs?

FINDINGS OF FACT

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

(1) Claimant applied for Medical Assistance and State Disability Assistance benefits on February 21, 2008.

(2) Claimant's impairments have been medically diagnosed as right shoulder dislocation and probable brachial plexus injury and a history of depression.

(3) Claimant's physical symptoms are constant pain in the right shoulder and arm, frequent pain in the rib area (muscle spasms), mild headaches, numbness in the right hand and occasional swelling in the right hand.

(4) Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.

(5) Claimant is 48 years of age.

(6) Claimant has a high school education.

(7) Claimant has employment experience as a horse trainer, riding instructor and factory worker.

(8) Claimant has significant limitations on physical activities involving sitting and lifting. Claimant has a limited range of motion in the neck and right shoulder.

(9) The department found that claimant was not disabled and denied claimant's application on August 11, 2008.

(10) Upon claimant's request for a hearing, medical evidence was submitted to the State Hearing Review Team. The State Hearing Review Team determined that claimant was not disabled for the programs.

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 400.10, *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).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *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).

The Department of Human Services conforms to state statute in administering the State Disability Assistance program.

2000 PA 294, Sec. 604, of the statute states:

Sec. 604. (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempted from the supplemental security income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

- (a) A recipient of supplemental security income, social security, or medical assistance due to disability or 65 years of age or older.
- (b) A person with a physical or mental impairment which meets federal supplemental security income disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...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 CFR 416.905

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

Here, claimant's impairment or combination of impairments is severe but does not meet nor is it the equivalent of a listed impairment. Claimant is also unable to do past work.

Therefore, the determination of disability will be based on claimant's residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

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. 20 CFR 416.967(a).

The medical evidence indicates that claimant may not be able to perform her previous work which was medium labor. Claimant appears to have the residual functional capacity to perform work on at least a sedentary level. Claimant has a history of depression; however, there is no medical evidence presented concerning claimant's emotional problems. Claimant testified that she takes no medication for any emotional problems. Claimant was involved in a motor vehicle accident in 2006 in which she suffered a head fracture, broken ribs, and fracture to her right shoulder. She complains of constant pain on her right side and right shoulder and arm, and frequent pain in her right rib area. Claimant testified that she has no insurance for prescribed pain

medication but takes over the counter pain medication which relieves some of the pain. She testified that she has headaches but they are not severe. She further testified she has numbness in her right hand and occasional swelling in her right hand. She testified she has no problems standing, walking, bending, or stooping. The medical records indicate upon examination that claimant does have some numbness on occasion with regards to her right shoulder. A medical report dated July 22, 2008 indicates there is no “evidence of joint laxity, crepitation or effusion. The right shoulder grossly appeared normal. The clavicle is slightly anterior. Apprehension sign in the right shoulder produces as well as crossover and Speed’s. Impingement sign is negative and drop sign is negative but produces pain.” The physician noted that claimant’s dexterity is unimpaired and that she could button clothing and open a door and had no difficulty getting on and off the examination table. She had no difficulty with heel/toe walking and no difficulty with squatting. All her ranges of motion studies of the joints were normal except for her right shoulder. The examining physician noted it would be difficult for claimant to lift and carry objects repetitively throughout the day, push or pull levers or repeatedly lift objects to chest level. Claimant further testified that she is able to perform such activities as cooking, washing dishes, sweeping and vacuuming. It appears, based on the medical evidence and claimant’s testimony, that the claimant has the residual functional capacity to perform work on at least a sedentary level. Claimant is a younger individual. 20 CFR 416.963. Claimant has a high school education. 20 CFR 416.964. Claimant’s previous work has been unskilled or skilled work. However, the skilled work may not be transferrable to sedentary types of jobs. Federal Rule 20 CFR 404, Subpart P, Appendix 2 contains specific profiles for determining disability based on residual functional capacity and vocational profiles. Under Table 1, Rule 201.21, claimant is not disabled for the purposes of the Medical Assistance and State Disability Assistance programs.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the department was correct in determining that claimant was not disabled for the purposes of the Medical Assistance and State Disability Assistance programs and it is ORDERED that the department's decision in this regard be and is, hereby, AFFIRMED.

/s/ _____
Rhonda P. Craig
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: February 20, 2009

Date Mailed: February 24, 2009

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 mailing 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.

RPC/kgw

cc:

