

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.: 2008-29093

Issue No.: 2009, 4031

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

November 26, 2008

Wayne County DHS (82)

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 26, 2008. The Claimant and her husband appeared at the Department of Human Service (Department) in Wayne County.

The record was left open to obtain additional medical information. The medical information was submitted to the State Hearing Review Team (SHRT) and the application was denied. 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) and retroactive MA-P to the month of February 2008 and State Disability Assistance (SDA) 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) The Claimant filed an application for MA-P on May 23, 2008.
- (2) On June 11, 2008 the Department denied the application; and on March 18, 2009 the SHRT guided by Vocational Rules 202.17/201.18 denied the application finding medical records established the ability to perform other light/sedentary unskilled work.
- (3) On August 11, 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 forty-seven years of age.
- (5) Claimant completed grade 10; and can read and understand English as evidenced in August 2007 by statements of reading the Bible, doing crossword puzzles, and working in a doctor's office in 1998. See Department Exhibit 4, (DE) page 143.
- (6) Claimant last worked in 1998 cleaning offices and in nursing home years ago; and the record reflects a doctor's office.
- (7) Claimant has alleged a medical history of depression, asthma, insulin dependent diabetes mellitus, chest pain, neuropathy of right/left feet and right leg, hypertension and high cholesterol.
- (8) July, August and September 2008, in part:

July: Discharge Diagnosis: Acute asthma exacerbation (Resolved). Improved after 2-3 breathing treatments and steroid therapy. Pulmonologist felt chest pain was atypical for angina and probably pleuric and tachycardia due to medications. Tachycardia improved. Blood pressure was controlled during hospitalization with [REDACTED] for peripheral neuropathy. Sliding scale insulin controlled diabetes. Advise to follow up with PCP after discharge. Physical examination of Respiratory, Cardiovascular, Abdomen, Musculoskeletal, Lymphatic: [withi normal limits.] Except Right leg and left arm. [REDACTED]. Department Exhibit (DE) 1, pp. 1-18

August: Alert, orientated times 3. Mood swings better. Increase medications of [REDACTED]. Start [REDACTED]. Directed to take medications and attention to diet and exercise. [REDACTED], [REDACTED].

August: Progress note; Mood/Affect normal. Reports that she has been helped at [REDACTED] but unable to identify specifics or services to enhance help. [REDACTED]

August: Mental Status: Alert, oriented times 3, anxious and nervous. Fair contact. Appears depressed, sad, tearful. Reported suicidal thoughts but no plans or intent. Insight and judgment were fair. Cognitive functions were fair. Memory grossly intact. Difficulty in attention and concentration. [REDACTED].

September: CURRENT DIAGNOSIS: DM II, asthma, hypertension, high cholesterol.

CLINICAL IMPRESSION: Stable.

PHYSICAL LIMITATIONS: Expected to last over 90 days; Lifting/carrying up to 25 pounds 1/3 of 8 hour day; stand and/or walk less than 2 hours in 8 hour day; sit about 6 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. Can meet own needs in home.

MENTAL LIMITATIONS: None. Medications: [REDACTED]

[REDACTED]. Department Exhibit 3, pp.3-168.

(9) December 2008, in part:

INDEPENDENT MEDICAL EXAM: Extremely obese. Alert, orientated times 3. WT: 344, HT: 70", BP 160/90, Visual Acuity left 20/50, right 20/50. No jaundice, gait normal, able to get on/off examination table. Can raise both arms above head. Fundus, HEENT, Chest, Cardiovascular, Heart Size, Abdomen, Bones & Joints, Nervous System: [All within normal limits.]

Pulmonary Function Test showed mild restrictive lung disease possibly related to severe obesity. No improvement following bronchodilators. [REDACTED]. DE N, pp. 1-9.

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 1998. 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 (6th Cir 1985).

In this case, the Claimant has presented sufficient medical evidence to support physical/mental limitations that have more than a minimal effect on basic work activities; and the impairments have lasted 12 months.

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 mental/physical impairment is "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 12.00 *Mental Disorders* and 3.02B *Chronic Restrictive Ventilatory Disorder*; and 11.14 *Peripheral Neuropathies*.

There were no medical records supporting a severe loss of mental function as found under 12.00C. There were no medical records that established severe loss of physical function under 1.00Ba. The Claimant has near normal mental/physical functioning. See finding of facts 8-9 [REDACTED] [REDACTED] opines the Claimant's shortness of breath is related to obesity. The Claimant's pulmonary function test results did not meet the criteria of Listing 3.02B or A. The Claimant does not have a severe loss of motor function to meet Listing 11.14. There was no medical evidence of cardiovascular disorder, which can be exacerbated by obesity. Morbid obesity itself is not considered a listing level impairment.

This Administrative Law Judge finds the Claimant is not presently disabled at the third step for purposes of the Medical Assistance (MA) program. 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/her 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.

Here, the medical evidence supports asthma with exacerbations, diabetes under control, depression treated with medications and out patient therapy, hypertension under control and no medical evidence of end organ damage from hypertension, fungus was intact. See finding of facts 8-9. The Claimant testified to not being able to perform cleaning of offices due to dust and fumes. But the Claimant also has experience with working in a doctor's office. See finding of fact 5.

When asked if she can read and write English, the Claimant testified she needed help. Other evidence of the Claimant's statements indicate there are no problems reading/writing English. In August 2008 [REDACTED] did opine problems with attention and concentration. At hearing the Claimant was paying attention, concentrating and had no problems in answering questions. But due to breathing problems and length of time since working in 1998, the undersigned will not return the Claimant to past work.

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 function capacity," defined simply as "what you can still do despite your 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 impairments.

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 forty-seven is considered a *younger individual*; a category of individuals age 45-49. Under Appendix 2 to Subpart P: Table No. 1—Residual Functional Capacity: Maximum Sustained Work Capability Limited to Sedentary Work as a Result of Severe Medically Determinable Impairment(s), Rule 201.18, for younger individual, age 45-49; education: limited or less—at least literate and able to communicate in English; previous work experience, unskilled or none; the Claimant is “not disabled” per Rule 201.18.

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 State Disability Assistance 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: 05/06/09

Date Mailed: 05/06/09

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:

