

[REDACTED]

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.: 2008-30037

Issue No.: 2009, 4031

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

December 8, 2008

Wayne County DHS [REDACTED]

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, the Claimant appeared at a hearing held on December 8, 2008 at the Department of Human Service (Department) in Wayne County.

The closing date was waived. Additional medical records were ordered with an Interim Order. No new medical records were received. The record closed. 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 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 June 2, 2008 the Claimant applied for MA-P and SDA.
- (2) On July 19, 2008 the Department denied the application; and on September 17, 2008 the SHRT denied the application finding the medical records supported the ability to perform basic work activities.
- (3) On July 23, 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-seven years of age.
- (5) Claimant completed grade 12; and can read and write English and perform basic math.
- (6) Claimant last worked June 2002 as a CD supervisor for 26 years.
- (7) Claimant has alleged a medical history of degenerative disc disease down bilateral legs, left leg weakness using a 3 prong crutches, and decreased right leg sensation, depression treated with counseling/medications but symptoms of isolation, inadequate self-care and weight gain.
- (8) [REDACTED], in part:

**MENTAL RESIDUAL FUNCTIONAL CAPACITY:**

Markedly limited in understanding and memory.

Markedly limited in sustained concentration and persistence.

Markedly limited in social interaction.

Markedly limited in adaptation. [REDACTED]

**PSYCHIATRIC EVALUATION:** Intake was in [REDACTED]

Currently asymptomatic but had chronic anxiety, loss of interest, sadness, hopelessness, low energy, insomnia, frequent awakening, agitation and poor frustration tolerance for three years. Medications have been helpful and with no side effects.

Currently living with relatives. Strengths are family involvement, good social skills and history of compliance but risk is the chronicity of the mental illness. Diagnosis: Axis I: Major depressive disorder, Recurrent, Mild. Axis V: 50. Medications Prozac, Klonopin. [REDACTED]. DE 1, pp. 16-20

(9) [REDACTED], in part:

CURRENT DIAGNOSIS: Hypertension, high cholesterol, GERD, Obesity, Low back pain/DJD. Lower extremity edema.

Height 63", Weight 290, BP 137/70.

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

FINDINGS: Obesity. Musculoskeletal: chronic lower back pain.

CLINICAL IMPRESSION: Stable.

PHYSICAL LIMITATIONS: Limited and expected to last 90 days or over. Lifting/carrying to 20 pounds 2/3 of 8 hour day; stand and/or walk at least 2-hpurs in 8 hour day. Sit about 6 hours in 8 hour day. No assistive devices needed to walk; use of both hand/arms for simple grasping, reaching, pushing/pulling and fine manipulating. Use of both feet for operating foot/leg controls. No mental limitations. Medications: motrin, darvocet, maxxide, flexoril, KCL, mevacor, atenolol. [REDACTED]

[REDACTED] DE 1, pp. 8-9.

#### 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 2002 when she was laid off due to her department closing. Thus, 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 (6<sup>th</sup> 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 (6<sup>th</sup> 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 that support both mental and physical impairments. These medical impairments will last her lifetime. See finding of facts 8-9. The medical evidence has established that Claimant has a mental and physical impairment that has more than a minimal effect on basic work activities. It is necessary to continue to evaluate the Claimant’s impairments under step three.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant’s physical and mental impairments are 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 mental and physical impairments are “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. In this matter, the medical records were completely inadequate. At hearing the Claimant testified to being treated in [REDACTED] at the hospital and treatment at [REDACTED] and seeing neurological and renal specialists. These records

were ordered but not received. The undersigned is unable to determine whether the Claimant is disabled under Appendix 1 of Subpart P of 20 CFR, Part 404.

In this case, due to the lack of medical records; 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 Claimant 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. See 20 CFR 416.945.

Claimant's past relevant work was in banking services for several years. According to [REDACTED] the Claimant can do basic work activities. But not according to the residual functional mental capacity of [REDACTED]. See finding of facts 8-9. These medical records were terrible; and did the Claimant an injustice. At the hearing the Claimant testified to breathing problems and use of an inhaler, anemia and abnormal kidney function tests. The undersigned decides the Claimant cannot return to past relevant work. The Claimant's impairments must be evaluated under step five.

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 fifty-seven is considered *advanced age*; a category of individuals age 55 and over. 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 201.06, for advanced age, age 55 and over; education: high school—does not provide for direct entry into skilled work; previous work experience, skilled or semi-skilled—skills not transferable; the Claimant is “disabled” per Rule 201.06.

It is the finding of the undersigned, based upon the medical data and hearing record that Claimant is “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 sufficient evidence to support a finding that Claimant's impairments meet the disability requirements under SSI disability standards. This Administrative Law Judge finds the Claimant is "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 "disabled" for purposes of the Medical Assistance program and the State Disability Program.

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

Accordingly, The Department is ORDERED to initiate a review of the June 2008 application to determine if all other non-medical eligibility criteria are met. The Department shall inform Claimant of its determination in writing. Assuming Claimant is otherwise eligible for program benefits, the Department shall review Claimant's continued eligibility for program benefits in **six months**, due to the lack of medical records, October 2009.

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

Date Signed: 04/06/09

Date Mailed: 04/07/09

**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:

