

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Claimant

Reg. No.: 2008-30202

Issue No.: 2009, 4031

Case No.:

Load No.:

Hearing Date:

December 22, 2008

Lenawee County DHS

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 December 22, 2008. The Claimant, her sister-in-law, and her friend appeared at the Department of Human Service (Department) in Lenawee County

The record was left open to obtain new medical information. Some new information was submitted and reviewed by 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 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 for MA-P and SDA on April 4, 2008.
- (2) On August 15, 2008 the Department denied the application; and on May 9, 2009 the SHRT determined from the medical records the ability to return to past relevant work.
- (3) On August 27, 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-nine years of age.
- (5) Claimant completed grade 12 and a few courses; and can read and write English and perform basic math.
- (6) Claimant last worked in February 2007 as a cashier with previous work experience in a sewing factory.
- (7) Claimant has alleged a medical history of low back pain for ten years, chronic obstructive pulmonary disease (COPD) using nebulizer/inhalers with current smoking, hypertension, arthritis and dry eye.
- (8) [REDACTED], in part:

CURRENT DIAGNOSIS: COPD with chronic {Illegible},
scoliosis [Illegible] osteo arthalgias-spine radicular pain [Illegible]

HT: 66-67", WT: 181, BP 128/78, Vision best corrected: right
20/40, left 20/30.

NORMAL EXAMINATION AREAS: Abdominal, Mental.

FINDINGS: [Illegible] . . . coughing, dyspnea; some weakness on
left doma ext pain back, walking, coughing or changing position
sensory decreased to left side.

CLINICAL IMPRESSION: Deteriorating.

PHYSICAL LIMITATIONS: Expected to last over 90 days;
Lifting/carrying less than 10 pounds 1/3 of 8-hour day; use of both

hand/arms for fine manipulating; use of both feet/legs for operating controls. Cannot meet own need in home. MENTAL LIMITATIONS: None. Medications: Atenolol, Vicodin, Soma, Aznament inhaler, Albuterol. [REDACTED]

Pulmonary Function Test: IMPRESSION: Moderate obstructive airway disease of emphysematous type with evidence of air trapping. No evidence of reversibility [REDACTED]

FVC PRE-BRONCH: 2.65—POST BRONCH: 2.75. FEV1 PRE BRONCH—1.80; POST BRONCH 1.97 Department Exhibit (DE) 1, pp. 12-19.

Chest X-ray for [REDACTED]: IMPRESSION: COPD, stable when compared to [REDACTED]

(9) [REDACTED], in part:

INDEPENDENT MEDICAL EXAMINATION:

Chief Complaints: “Asthma, COPD, back and left hip pain, scoliosis and Wolf-Parkinson-White Syndrome.”

HISTORY: Has been 38 year smoker and currently smoking one and one-half packs/day. States can climb one flight of stairs without stopping and can walk one-half block without stopping. No ER visits in past 12 months. Coughs frequently with some production. No hemoptysis. States has allergies to air pollens. Sleeps on two pillows and has occasional paroxysmal nocturnal dyspnea. Uses inhaler as necessary for shortness of breath and Azmacort in AM.

Since taking Atenolol for the Wolf-Parkinson-White Syndrome has far less episodic tachycardia and no hospitalization for this since [REDACTED]

PHYSICAL EXAMINATION: Appearance/Mental Status, Vital Signs, Skin, Eyes/Ears, Neck, Chest, Heart, Abdomen, Vascular, Musculoskeletal, Range of motion all Joints, Neuro: [All within normal limits.] Except: Obesity and variable bronchi and occasional mild expiratory wheezing heard in lungs; and limitations in range of motion in right/left hips. [REDACTED]

[REDACTED]. DE A to L.

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 at hearing to not performing SGA since February 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 (6th Cir 1985)

The medical evidence has established that Claimant had physical impairments which are more than minimal, which effect basic work activities, and will last for the rest of the Claimant’s life. There were no medical records establishing mental impairments that prevent 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 physical 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 her 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.

The medical evidence established COPD and some decreased range of motion of both hips. There were no other physical impairments established in the medical records or had medically prescribed physical limitations but all other physical impairments were responsive to medical treatment. See finding of facts 8-9.

Appendix I, Subpart P of 20 CFR, Part 404, Listings discusses the analysis and criteria necessary to a finding of a listed impairment. The undersigned's decision was based on Listing 3.00 *Respiratory System* and Listing 1.00 *Musculoskeletal System*.

Listing 3.00 *Respiratory System* is not met due to the values of the Claimant's FVC and FEV1 which for her height of 66" did not meet the criteria.

For Listing 1.00 *Musculoskeletal System*, the most important criteria that must be established in the medical records is loss of function of the musculoskeletal systems. The criterion requires of loss of upper and lower extremity function; and this was not established in the medical records submitted.

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 impairments do not meet listing level requirements. 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.

The Claimant was able to physically function as set out by [REDACTED] but not by [REDACTED]. [REDACTED]. The records submitted from the Social Security data were reviewed by [REDACTED]; and the Claimant's doctors' statements/limitations were found not credible. See documents filed for federal benefits. But at hearing the Claimant testified to not being able to return to cashier type work. For this reason the undersigned decides the Claimant cannot return to past relevant 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 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-nine 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 or light work as a Result of Severe Medically Determinable Impairment(s), Rule 201.27, for younger individual, age 45-49; education: high school graduate or more; previous work experience, unskilled or none; the Claimant is “not disabled” per Rule 201.27.

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: 04/20/09

Date Mailed: 04/20/09

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:

