

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.: 2008-30335
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
December 4, 2008
Wayne County DHS (35)

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 4, 2008. The Claimant and her mother [REDACTED] appeared at the Department of Human Service (Department) in Wayne County.

The record was left open to obtain new medical information. New medical records were 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) 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) The Claimant applied for MA-P and SDA on April 5, 2008.
- (2) On June 27, 2008 the Department denied the application; and on March 27, 2009 the SHRT guided by Vocational Rule 203.28 denied the application based on medical records and finding an ability to perform other unskilled, medium work.
- (3) On August 26, 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 two years of college with a business certificate; and can read and write English and perform basic math.
- (6) Claimant last worked in June 2006 as a cashier, floor sales at [REDACTED] for ten years; and clerk at the post office for 12 years.
- (7) Claimant has alleged a medical history of rapid heart beat causing episodes of passing out, inability to move legs, right and left hip pain with difficulty walking and standing, a seizure, hypertension, shortness of breath and decreased memory.
- (8) March 2008, in part:

March: MRI brain: Solitary area of signal hyper intensity right parietal lobe. Findings are non-specific; and differential diagnoses include vasculitis, microangiopathic infarct or demyelinating plaque. Remote trauma and viral infection are less likely. No evidence of mass or abnormal contrast enhancement. [REDACTED]
[REDACTED] Department Exhibit (DE) 1, pp. 30-31.

March: CBC results: [Within normal limits.] Except MCHC low 31.2 in range of 32.1-35.3. MPV high 12.0 of range 7.3-11.4 DE 1, p. 22.

- (9) May and June 2008, in part:

May: CURRENT DIAGNOSES: COPD compromised, syncope, low back pain, obesity, asthma.

Height 64" Weight 310, BP 140/92

NORMAL EXAMINATION AREAS: HEENT, Respiratory, Cardiovascular, Abdominal, Musculoskeletal.

FINDINGS: General: obesity gait disturbance. Neuro: poor coordination.

CLINICAL IMPRESSION: Deteriorating.

LIMITATIONS: Lifting/carrying up to 10 pounds 1/3 of 8 hour day; stand and/or walk less than 2 hours in 8 hours; sit about 6 hours in 8 hours; waking assistive devices needed; use of both hands/arms for simple grasping, reaching, pushing/pulling, fine manipulating; use of both feet/legs for operating foot controls. SUPPORT FOR LIMITATIONS: Spinal cord compression.

MENTAL LIMITATIONS: none.

Medications: HZTZ, vicodin, lopressor, advair, inhaler.

MEDICAL NEEDS; Ambulatory, help with mobility, shopping, laundry, housework. Off from past work and other work for 8 months--[January 2009] [REDACTED] Department Exhibit (DE) 1, pp. 10-13.

June: ER treatment. Diagnosis: chest wall pain. Secondary diagnoses: abdominal/epigastric pain. Physical Examination: Constitutional, Head, Eyes, ENT, Neck, Card, Resp, Abd, Ext, Skin, Neuro, Musculoskel: [All within normal limits.] Except: rib cage tenderness to palpation. All lab tests were within normal range except urine positive for opiates and elevated glucose. Chest X-ray showed lungs clear, heart normal size, minimal atherosclerotic vascular changes. Soft tissue and bone structures normal. EKG was [Within normal limits.] Breathing treatment given and supplemented with nasal oxygen. Discharged to home in stable condition. To F/U with PCP in 1-2 days. [REDACTED] DE A, pp. 1-20.

(10) February and March 2009, in part:

February: Ophthalmic Exam: I do not see ophthalmic disease that is not appropriate for age and that would interfere with work-related activities. Bilateral vision 20/20 best corrected. [REDACTED] [REDACTED] DE B, pp3-7

March: Pulmonary Function Test: Cooperation was only “OK.”
Pre: FVC—1.97. FEV1—1.17. Post: FVC—2.17. FEV1—1.47.
DE B, p. 1-2.

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, the

Claimant testified to not performing SGA since June 2006. 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 has physical limitations that have more than a minimal effect on basic work activities; and Claimant’s impairments have are

expected to last a lifetime. See findings of fact 9-10. There were no medical records establishing a mental impairment that would prevent the performance of basic work activities. It is necessary to continue the evaluation 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 impairments are listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Based on the hearing record, and the lack of medical records, 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.

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 establish breathing problems. The medical records did not establish any other medical condition. See finding of facts 8-10. Appendix 1 of Subpart P of 20 CFR, Part 404; 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 Listings 3.00 *Respiratory system*.

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. At the pulmonary function test the Claimant did not give full cooperation. Results post bronchodilator were above meeting the criteria of the Listing 3.02A and B at FVC—2.17 and FEV1—1.47 for height 64". Her own physician after examination and testing in June 2008, [REDACTED] returns her to work in January 2009.

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. 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 cashier, retail sales floor and remote post office work. The Claimant testified at hearing she could not return to past work as a cashier. The undersigned accepts this testimony; and finds further evaluation under step five is necessary.

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 by impairments to sedentary work.

The Claimant is evaluated under Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines:

20 CFR 416.967(a), *sedentary work*:

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 in age group 45-49 when age is a lesser advantage factor for making adjustment to other work; Rule 201.21; education: high school graduate or more; previous work experience: skilled or semiskilled—skills not transferable; Claimant is “not disabled” per Rule 201.21.

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 evidence to support a finding that Claimant's impairments meet the disability requirements under SSI disability standards, and prevents substantial gainful activities for ninety days. This Administrative Law Judge finds the Claimant is presently "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: 04/01/09

Date Mailed: 04/01/09

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

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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.

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