

[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.: 2008-3164  
Issue No.: 2009  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date:  
May 14, 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, the Claimant, her daughter, [REDACTED] and her representative [REDACTED] appeared at a hearing held on May 14, 2008 at the Department of Human Service (Department) in Wayne County.

The closing date was waived. Additional medical records were ordered by Interim Order; and the representative agreed on the record to provide additional current medical records. No new medical records were received; and the record closed. The 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) 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 March 13, 2007 the Claimant applied for MA-P.
- (2) On June 26, 2007 the Department denied the application; and on January 25, 2008 the SHRT denied the application finding the medical records did not establish duration per 20 CFR 416.909.
- (3) On September 20, 2007 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. Department Exhibit (DE) 1, pp. 71 and 74.
- (6) Claimant last worked as a home health aid and previously for the [REDACTED] for 20 years. DE 1, p. 74.
- (7) Claimant has alleged a medical history of left sided weakness with hand numbness, hypertension, diabetes mellitus, anxiety with tearful episodes, anger and shakiness and a back problem from an injury.
- (8) March 2007, in part:

DISCHARGE DIAGNOSES: Acute cerebrovascular accident with left sided hemiparesis. Nonsustained ventricular tachycardia, Essential hypertension, Noninsulin dependent diabetes mellitus, Accelerated hypertension, Gastrointestinal reflux.

SIX DAY HOSPITALIZATION: Admitted for right sided facial droop, dysarthria and right upper extremity weakness. Denies leg weakness. CT scan showed right middle cerebral infarct without bleeding, mass effect or midline shift. Condition gradually improved. Family decided to take and care for her at home and declined acute rehab and subacute rehab. Medications prescribed: Metformain, Glutrol, Aggrenox, Zestril, hydrochlorothiazide, Zocor. Follow with [REDACTED] one week. Overall prognosis guarded. [REDACTED]. DE 1, PP. 28-29.

THREE DAYS LATER: Came to ER secondary to mild episodic shortness of breath. No history of asthma or COPD. Breathing treatment given and states much improved. Recent CVA.

PHYSICAL EXAMINATION: BP 146/77, WT: 220, orientated times three, no acute distress. HEENT, Heart, Abdomen, Extremities: [Within normal limits.] Full range of motion all four extremities. Except expiratory wheezes bilaterally. Dyspnea resolved. Denies chest pain. CT scan thorax showed no evidence of central pulmonary embolism. Enlarged main pulmonary artery suggestive of pulmonary arterial hypertension. Degenerative spine. [REDACTED] DE 1, pp. 21-59.

(9) June 2007, in part:

PHYSICAL EXAMINATION: HT: 4'11", WT 184, BP 170/110. Visual acuity without glasses 20/20 right, 20/20 left. General, Fundi, Chest, Neck, Abdomen, Extremities, Heart, Neurological, Coordination, Squatting, Getting on/off exam table, Range of motion all joints: [All within normal limits.] Except left pronator drift, left facial weakness and asymmetry. Reflexes left upper/lower extremity minimally brisk compared to right. Intact strength in right upper extremity and bilateral lower extremities.

Gait: Able to walk on heels/toes, able to tandem walk, mild difficulty standing on toes/heels, using a cane but able to walk without cane. CONCLUSION: left facial asymmetry and weakness. Left pronator drift. Minimal balance difficulty. [REDACTED] DE 1, pp. 12-18.

(10) July 2007, in part:

CURRENT DIAGNOSIS: Right CVA, DM Type II—uncontrolled. HTN, Iron deficiency anemia.

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

FINDINGS: General: ambulates with cane. A&O X 3. Cardiovascular: Grade I-II/VI systolic murmur. Musculoskeletal: diminished left upper extremity strength. Neuro: left sided facial droop.

CLINICAL IMPRESSION: Stable.

PHYSICAL LIMITATIONS: Limited, expected to last over 90 days; Lifting/carrying less than 10 pounds 1/3 of 8 hour day; never 10 pounds or over; sit about 6 hours in 8 hour day; assistive devices are needed; use of both hand/arms for simple grasping, reaching; use of right hand/arm for pushing/pulling, fine manipulating; use of right feet/legs for operating controls. Cannot meet own need in home with grooming, dressing, meal preparation, housework. Medications: Metformin, Glucohol, Lisinopril, HCTZ, Zocor, Aggrenox, Ferrous Sulfate.

MENTAL LIMITATIONS: None. [REDACTED]

[REDACTED] Claimant Exhibit A, 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, Claimant testified to retiring from the performance of SGA. Thus, the 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 supports physical limitations but there was no medical evidence of mental limitations. See finding of facts 8-10. The medical evidence has established that Claimant has a physical impairment that has more than a minimal effect on basic work activities up to the date of July 2007. From March 2007 through July 2007 medical records establish physical impairments. At hearing May 2008, the Claimant testified to driving a vehicle, cooking a little, independence with some help in ADLs, cleaning her house a little, sitting for less than 45 minutes, standing less than one hour, walking, climbing stairs with right leg useful, lifting less than five pounds. 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 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 establish some left sided weakness and facial symmetry. See finding of fact 8-10. Under Appendix 1 of Subpart P of 20 CFR, Part 404, Listing 1.00 *Musculoskeletal System* fits the medical evidence in this case. There were no medical records that the Claimant suffered another CVA; the Claimant was medically treated for both hypertension and had non-insulin dependent diabetes mellitus as of July 2007.

There were no medical records establishing these conditions disabled the Claimant from the activities she testified to above in May 2008. The undersigned finds the Claimant's medical records do not establish the criteria, severity and intent of the listings under Appendix 1 of Subpart P of 20 CFR, Part 404.

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 was home health care and retirement from [REDACTED]. Given the physical limitations and the absence of evidence, the undersigned decides they 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 totality of 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 based on the testimony that the Claimant can drive a vehicle. This activity uses both arms and legs. 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 201.04, for individuals of *advanced age*, over 55; education: high school graduate or more—does not provide for direct entry into skilled work See finding of fact 5; previous work experience, unskilled or none; the Claimant is “disabled” per Rule 201.04.

It is the finding of the undersigned, based upon the medical data and hearing record that Claimant is “disabled” at the fifth step.

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 based on disability programs.

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

Accordingly, The Department is ORDERED to initiate a review of the March 2007 application to determine if all other non-medical eligibility criteria are met. The Department shall inform the Claimant and the representative 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 current medical records in September 2009.

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

Date Signed: 03/26/09

Date Mailed: 03/26/09

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

2008-3164/JRE

cc:

[REDACTED]