

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.: 2008-4745
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
February 13, 2008
Genesee County DHS (2)

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 February 13, 2008. The Claimant, her grandmother and her sister appeared at the Department of Human Service (Department) in Genesee County.

The record was left open to obtain additional medical information. New medical records were received 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 the State Disability Assistance 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 and SDA July 23, 2007.

- (2) On September 24, 2007 the Department denied the application; and on July 22, 2008 the SHRT denied the application not finding a mental/physical impairment that prevented basic work activities.
- (3) On September 24, 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 thirty-three years of age.
- (5) Claimant completed grade 12 and some college; and can read and write English and perform basic math.
- (6) Claimant last worked in October 2006 selling retail memberships at a warehouse for 8 years and is on sick leave; and work in retail at [REDACTED]
- (7) Claimant has alleged a medical history of chronic pelvic pain after four surgeries including a hysterectomy and both ovaries removed from endometriosis, fainting, right/left leg numbness and depression/anxiety attacks.
- (8) February and May 2007, in part:

February: Saw patient at the Gynecologic Minimally Invasive Surgery and Chronic Pelvic Pain Clinic; and pain is of uncertain etiology and has not responded to Vicodin and we will make a contract for narcotic adjustment and referral to physical therapy. Surgery will be in April 2007. Patient will see physical therapist to address her musculoskeletal needs. [REDACTED]

May: HISTORY: Pain left lower quadrant.

CURRENT DIAGNOSIS: Chronic pelvic pain with muscular component. Endometriosis

HT: 67", WT: 126, BP 90/68

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

CLINICAL IMPRESSION: Improving.

PHYSICAL LIMITATIONS: Limitations expected to last 90 days. Lifting/carrying less than 10 pounds 2/3 of 8 hour day; 10 pounds 1/3 of 8 hour day; never 20 or over; stand and/or walk at least 2 hours in 8 hour day; sit less than 6 hours in 8 hour day; no assistive devices are needed; use of both hand/arms for simple grasping, reaching, fine manipulating no pushing/pulling; Can meet own needs in home. MENTAL LIMITATIONS: None. Medications: Esterase.

MEDICAL NEEDS: Diagnosis ongoing. Ambulatory but needs driver due to anxiety. Return to past work or to any other work undeterminable. [REDACTED]

Department Exhibit (DE) 1, pp. 3A-4.

May: Post operative follow up with patient reporting recovering quite well with unremarkable 10-point system review. Reports significant reduction in pain and she wants to resume physical therapy for the musculoskeletal components of the pain. Pathology report was benign. [REDACTED]

December: F/U office: some improvement but still irritates. Feels depressed with decreased sleep; negative for suicidal or homicidal feelings. Still trying to help children but decrease patience. Lives with mother. Appointment with PMR. PE: Abdomen: lower generalized pain with negative guarding or rebound. Vulva negative for lesion. Medications: Vicodin, Aleve, Effexor, Phenergan, Prempro for surgical menopause and for possible pelvic implants of endometriosis. [REDACTED]

(9) January and February 2008, in part:

C/O of frequency of urination with 4 times to bathroom. Started physical therapy but not able to return to work. E. Coli infection susceptible to drug Nitrofurantoin. Medications: Manobid, Pyndium. [REDACTED]

February: Follow up: negative urinalysis. Effexor “makes me feel loopy.” Some improvement w/us without antidepressant. Hot flashes not as bad as previously. Still difficult to get up and around. Surgical menopause with vasomotor symptoms. Increase ES.

Depression versus vasomotor symptoms with chronic pain so resume physical therapy sessions. Negative improvement per patient. But motivated to resume. Begin Elavil; and

February: Feeling a little better on Prempro. Lump in groin has since gone. MRI for back planned. Less loopy with Elavil. F/U with psychologist for depression. GA: mild distress with walking and mild lower abdominal tenderness. Negative for guarding and rebound. [REDACTED]

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 December 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)

In this case, the Claimant has presented medical evidence of physical/mental impairments and pain of uncertain etiology. The medical records have established that Claimant has physical/mental impairment that has more than a minimal effect on 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 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 physical and mental impairment 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 Claimant testifies and the medical records record pelvic pain. Appendix I, Listing of Impairments (Listing) discusses the analysis and criteria necessary to a finding of a listed impairment. There was no established causation for the pain except [REDACTED] opined endometriosis. This is not considered a disablement under the listings. Listing 12.00 *Mental disorders* was reviewed. There were insufficient medical records to establish that the Claimant was receiving psychological treatment except for the anti-depressant medications prescribed by [REDACTED] which were helpful according to the February 2008 records. See finding of fact 8-9

This Administrative Law Judge finds the Claimant is not presently disabled at the third step for purposes of the Medical Assistance (MA) program due to the lack of medical records establishing the intent and severity of Appendix 1 of Subpart P of 20 CFR, Part 404 listings. 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 findings were essentially normal for all body systems except chronic pelvic pain and some depressive symptoms. There was some medical evidence of a scheduled MRI of the back but no medical testing results were submitted. [REDACTED] continually found the Claimant unable to return to work.

In February 2008, [REDACTED] noted this was according to the Claimant. The medical records indicate the cause of the pain was unknown after several surgeries, according to the Claimant, the pain persisted. The Claimant's complaints of pain were subjective. [REDACTED] opined to a musculoskeletal component to the pain and physical therapy was prescribed. There was no direct evidence of the Claimant's participation in this treatment as prescribed.

The Claimant testified she cannot return to past relevant work due to the pelvic pain, slowness due to Vicodin. [REDACTED] alluded to a narcotic contract; meaning perhaps misuse or over use of the Vicodin. The Claimant was prescribed Aleve too; and there were medical records noting pain improvement. But the undersigned accepts this testimony and does not return the Claimant 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 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 Thirty-three is considered a *younger individual*; a category of individuals age 18 to 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 201.27, for younger individual, age 18 to 49; education: high school graduate; 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 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: 4/29/09

Date Mailed: 4/29/09

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:

