

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: 2008-4892

Issue No: 2009, 4031

Case No:

Load No:

Hearing Date:

February 14, 2008

Kent County DHS

ADMINISTRATIVE LAW JUDGE:

Colleen M. Mamelka
for Jacqueline Y. Hall-Keith

HEARING DECISION

The hearing in this matter was conducted by Administrative Law Judge Jacqueline Hall-Keith on Thursday, February 14, 2008 pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. The Claimant appeared and testified. The record was extended for further medical evidence. Judge Jacqueline Hall-Keith left State employment before the hearing decision was written. The undersigned Administrative Law Judge has written this hearing decision after review of all evidence in the record including the recording of the actual hearing as well as additional documents received.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA") program.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material and substantial evidence on the whole record, finds as material fact:

1. The Claimant submitted a public assistance application seeking MA-P benefits on May 14, 2007.

2. On August 1, 2007, the Medical Review Team (“MRT”) determined the Claimant was not disabled finding the Claimant’s impairment(s) to be non-severe with treatment.

3. On August 10, 2007, the Department sent an eligibility notice informing the Claimant that her MA-P benefits were denied.

4. On September 21, 2007, the Department received the Claimant’s Request for Hearing protesting the denial of benefits.

5. On January 17, 2008, and again on December 1, 2008, the State Hearing Review Team (“SHRT”) found the Claimant not disabled.

6. The Claimant’s alleged disabling impairments are due to asthma and hernias.

7. [REDACTED]

8. The Claimant is a high school graduate with some college and has a work history of unskilled labor.

9. The Claimant’s previous employment includes work as an inventory control specialist.

CONCLUSIONS OF LAW

The Medical Assistance (“MA”) program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services (“DHS”), formally known as the Family Independence Agency, pursuant to MCL 400.10 *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”).

Disability is defined as 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 CFR 416.905(a) The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913 An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a) Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.929(a)

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3) The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2)

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1) The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in

Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4) If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4) If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945 Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1) An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4) In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv)

In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a) An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a) As outlined above, the first step looks at the individual's current work activity. An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a)(4)(i) The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6)

As previously stated, the first step looks at the individual's current work activity. An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a)(4)(i) In the record presented, the Claimant is not involved in substantial gainful activity and last worked in October of 2006. The Claimant is not disqualified from receipt of disability benefits under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b) An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c) Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b) 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.

Id. The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely

from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985) An impairment qualifies as severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985)

In the present case, the Claimant alleges disability on the basis of asthma and hernias. As part of the verification process, the Claimant submitted a DHS-49 completed [REDACTED] [REDACTED] condition as stable but was unable to assess the Claimant's limitations or make recommendations regarding the Claimant's disability until pulmonary function test results were obtained. Prior to the hearing, no medical records were submitted regarding the Claimant's asthma treatment.

On May 29, 2007, the Claimant had outpatient surgery at Spectrum Health, Butterworth Campus, for the repair of bilateral inguinal hernias and the removal of bilateral round ligament lipomas [REDACTED] the surgery without complications.

On February 14, 2008, Administrative Law Judge Jacqueline Hall-Keith issued an Interim Order requesting hospital records from the University of San Diego, as well as records from the Claimant's May 29, 2007 hernia surgery, discussed above. In addition, an updated DHS-49 was requested and appointments with an internist, psychiatrist, and ophthalmologist were requested to include a pulmonary function test.

On March 24, 2008, the Claimant attended an ophthalmologist appointment [REDACTED] [REDACTED] found the Claimant to have early cataracts and astigmatism in both eyes. As a result, the Claimant was given a new prescription for eyeglasses. The Claimant's vision was capable of improvement and no limitations were imposed.

On November 5, 2008, an appointment with an Internist was scheduled for the Claimant. The Claimant failed to call or attend the evaluation. If an individual fails or refuses to take part

in a consultative examination or tested arranged for by the department without good cause, a finding of not disabled may be made. 20 CFR 416.918(a) Additionally, the Claimant failed to submit an updated DHS-49 or the medical records from the University of San Diego. As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). In the present case, the submitted record is devoid of objective medical evidence documenting the existence of a severe impairment, or combination of impairments, that significantly limits the Claimant's physical or mental ability to perform basic work activities. Accordingly, the Claimant is found not disabled at the second step.

DECISION AND ORDER

The Administrative Law Judge, based upon the above finds of facts and conclusions of law, finds the Claimant not disabled for purposes of the Medical Assistance program.

Accordingly, it is Ordered:

The Department's determination is AFFIRMED.

/s/ _____
Colleen M. Mamelka
Administrative Law Judge
For Ishmael Ahmed, Director
Department of Human Services

Date Signed: 01/06/09

Date Mailed: 01/09/09

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.

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The Claimant may appeal the Decision and Order to the Circuit 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.

CMM

cc:

