

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.: 2008-6868
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
February 25, 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 February 25, 2008. The Claimant and her brother appeared at the Department of Human Service (Department) in Wayne County.

The record was left open to obtain additional medical information. An Interim Order was issued for new medical records. The records were not received and the record closed. 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's benefits for MA-P and SDA were re-determined in July 2007.
- (2) On October 8, 2007 the Department denied the application; and in January 2008 the SHRT denied the application finding the medical records indicated a non-severe impairment that does not prevent basic work activities.
- (3) On October 10, 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 forty-four years of age.
- (5) Claimant completed grade 12 plus associate degree in science; and can read and write English and perform basic math.
- (6) Claimant last worked in 2007 providing assistive services in home care; and was a teacher assistant and worked for [REDACTED].
- (7) Claimant has alleged a medical history of lifelong neurofibroma with surgical removal and re-growth, pain in multiple areas, dizziness and anemia.
- (8) January 2008, in part:

The Claimant has multiple lesions or neurofibromas over her arms, trunk and legs. However, her exam is within normal limits other than the neurofibroma. Gait is normal, grip and dexterity are intact. Neurological findings were within normal limits. SHRT. Department Exhibit (DE) 1

- (9) May 2007, in part:

HISTORY: Surgical removal of neurofibromas age 15 and in 2007.

CURRENT DIAGNOSIS: Neurofibromas.

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

FINDINGS: Musculoskeletal: multiple neurofibromas.

CLINICAL IMPRESSION: Stable.

PHYSICAL LIMITATIONS: Limited to lifting/carrying up to 10 pounds 1/3 of 8 hour day; stand and/or walk at least 2 hours in 8 hour day; sit about 6 hours in 8 hour day; no assistive devices are needed; use of both hand/arms for simple grasping, reaching, pushing/pulling, fine manipulating; use of both feet/legs for operating controls. Can meet own need in home.

MENTAL LIMITATIONS: None.

Medical Needs: Ambulatory, no special transportation or need for other to make appointments. Cannot work at usual occupation but can work at other occupations with no lifting over 20 pounds.

██████████, MD. De 1, pp. 8-10

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 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 (6thCir 1985).

In this case, the Claimant has presented sufficient medical evidence to support some physical limitations that have 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.

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 Listing 11.00 *Neurological Disorders*. Neuroblastomas can casue neurological problems if the tumor involves a major motor or sensory nerve or a nerve that is compressed between the tumor and a hard structure. There was no medical evidence of the Claimant's neuroblastomas casuing neurological problems. But the Claimant does complain of pain.

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 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 the neuroblastomas. The Claimant testified to pain and sore legs. The condition of neuroblastoma is genetic and has occurred in her daughter's kidneys; and her brother has the condition. The Claimant testified that her other brother and father died of the effects of neuroblastoma because the condition can become malignant. [REDACTED] sets out a description of the claimant's condition:

With countless lumps all over her body including the face, the chest, the abdomen, the neck and all four extremities. . . . Some of the lesions are painful and . . . are at risk for malignant transformation of neuroblastomas . . . and at risk for hypertension and loss of vision from optic nerve gliomas. She needs annual MRIs [to visualize internal organs.] DE p. 71.

Based on the totality of the medical records; the undersigned decides the Claimant cannot return to past relevant work or any other type work. The claimant has not made a medical improvement and likely never will. The Claimant is "disabled" at step four.

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 sufficient 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 "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 "disabled" for purposes of the Medical Assistance and State Disability assistance program.

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

Accordingly, The Department is ORDERED to initiate a review of the July 2007 re-determination application to determine if all other non-medical eligibility criteria are met. The Department shall inform Claimant 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 May 2010.

/s/

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

Date Signed: 05/13/09

Date Mailed: 05/13/09

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:

