

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

████████████████████

Reg. No.: 2008-8874
Issue No.: 2009, 4031
Case No.: ██████████
Load No.: ██████████
Hearing Date:
April 10, 2008
Alpena County DHS

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 April 10, 2008. The Claimant, her daughter ██████████ her mother ██████████, her son ██████████ her roommate ██████████, her fiancé ██████████ appeared at the Department of Human Service (Department) in Alpena County.

The record was left open to obtain additional medical information. An Interim Order was issued for additional medical records; and no new medical records were received. 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) program 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 filed an application for MA-P and SDA on September 6, 2007; and a June 2006 previous application was denied.
- (2) On November 6, 2007 the Department denied the application; and on February 28, 2008 the SHRT guided by Vocational Rule 202.20 denied the application because medical records indicated a capacity to perform other light work.
- (3) On November 13, 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-eight years of age.
- (5) Claimant completed grade 12; and can read and write English and perform basic math.
- (6) Claimant last worked in 2005 as manager at a fast food restaurant; and kitchen manager and cooking for 15 years.
- (7) Claimant has alleged a medical history of diverticulosis with abdominal pain on exertion, laparotomy to remove left ovary leaving adhesions, hernia repairs, left colectomy and left leg edema and decrease in memory.
- (8) September 2007, in part:

DISCHARGE DIAGNOSES: Acute/Chronic abdominal pain likely secondary to mild ileus with fecal status. Gastrointestinal (GI bleed. GI reflux disease. Poor dentition, Hemorrhoids.

Presented to ER C/O abdominal pain. CAT scan showed not obstruction. Pain was controlled on Dilaudid. An enema was given with good results. Tolerated general diet and was discharged. No heme-positive stools throughout admission. States feels much

better and having BM and stable for discharge. Denies chest pain, shortness of breath, nausea and vomiting. No fevers. Speech fluent. Physical Exam at the time of discharge: [All within normal limits.] Except some large external hemorrhoids. Discharged on medications prescribed. Resume normal activity; and to follow up with [REDACTED] Department Exhibit (DE) 1, pp. 186-188 and 206-213.

(9) January 2008, in part:

DIAGNOSES: Abdominal wall pain. Probable chronic pain syndrome. History of multiple abdominal/pelvic surgeries. Chronic constipation. Morbid obesity.

During last 12 months has undergone numerous diagnostic studies. The most recent show normal bowel and some left-sided diverticulitis. PHYSICAL EXAMINATION: Height 63", weight 250.8 pounds with BMI of 44.5. Blood pressure 130/80. Heart, Lungs, Thoracic cage, Abdominal, Pinprick, Touch sensation of Trunk, CVA, skin: [All within normal limits.] Except obesity of abdomen and superficially and diffusely tenderness aggravated by muscle guarding.

RECOMMENDATIONS: I do not believe further diagnostic testing would be of any value. I have instructed her to use simple measure, use of heat etc. Strongly urged weight reduction program, including exercise and treadmill because not uncommon to see abdominal wall pain aggravated by obesity. Advise increase MiraLax. [REDACTED]. De 3, pp. 1-4.

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. 20 CFR 416.920(b). In this case, under the first step, Claimant testified that he was not working at the time of hearing. 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. The medical evidence has established that Claimant has a physical impairment that has more than a minimal effect on basic work activities. The Claimant’s medical records do not document mental impairments that effect 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 5.00 *Digestive System*. There was no medical evidence of intestinal obstruction; and there was no malnutrition or weight loss due to the Claimant's GI impairments.

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 Listing 5.00. 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 GI and pain. The Claimant testified to having abdominal pain on exertion; and only feeling less pain when lying with knees bent. There were no medical records establishing loss of upper and lower extremity function. In fact, [REDACTED] recommended weight loss, use of a treadmill and exercise. Meaning there are no limitations preventing these activities. The Claimant is independent in ADLs and drives every day. Driving establishes function of both upper and lower extremities. But the Claimant testified at hearing that she cannot return to past relevant work due

to memory and too much standing. 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-eight 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 program 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: 04/10/09

Date Mailed: 04/13/09

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

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