

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. 2008-9160

Issue No. 2009; 4031

Case No:

Load No. [REDACTED]

Hearing Date:

April 17, 2008

Luce 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 17, 2008. The Claimant appeared at the Department of Human Services (Department) in Luce County.

The record was left open to obtain additional medical information. The medical information was submitted to the State Hearing Review Team (SHRT) and the application was denied. Thus the matter of disability is now before the undersigned for final decision.

ISSUES

Whether the Department properly determined the Claimant is "not disabled" for purposes of Medical Assistance (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 filed an application for MA-P and SDA on July 23, 2007; and the Department denied the application October 8, 2007.

(2) On July 25, 2008 the SHRT denied the application finding a lack of impairments affecting basic work activities and citing the materiality of drug and alcohol abuse per 20 CFR 416.921(a).

(3) On October 25, 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 11 and a GED; and can read and write English and perform basic math.

(6) Claimant last worked in [REDACTED] as a dental lab tech, doing office billing, phoning and faxing; and prior was a cook, a gas station clerk, and a bartender/waitress.

(7) Claimant has a medical history of pelvic pain effecting sitting, standing and walking; depression/bipolar disorder with agitation, anxiety with shortness of breath and panic attacks.

(8) [REDACTED], in part:

Discharge Diagnoses: Depression, polysubstance dependence. Borderline personality disorder. Chronic pelvic pain. Discharge Medications: Effexor, Desyrel, Thoraxine, Motrin. Instructed to stay off all addictive substances.

Admitted for suicidal ideation. Friends report she is much better if she is sober and takes medications. No history of past hospitalizations or outpatient mental health treatment. Had been using significant amount of marijuana, cocaine and alcohol prior to admission. States last use was [REDACTED]. Signed out of outpatient treatment [REDACTED]; and has very difficult time if she does not get her own way and her moods switch very quickly.

Goes to AA. Has chronic pelvic pain and ultrasound revealed left adnexal mass rising from left ovary; and was advised to have mass surgically removed. CA-125 was normal. Physical Examination was normal. After medication treatment anxiety level decreased and was not overwhelmed and she was doing very well. Instructions given for follow up treatment care. Not suicidal over last three days and she was asking for discharge. It was felt she was no longer a danger to herself. [REDACTED]. Department Exhibit (DE) 1, pp. 27-55.

(9) [REDACTED], in part:

Operative Report: Findings: normal appearing left ovary with multiple simple cysts. Minimal adhesions in the pelvis. No evidence of any other pelvic pathology. The ovary was removed without complications or blood loss. Transferred to recovery in stable condition. [REDACTED].

Follow up: States pain has resolved and this was good result for her. Follow with PCP for possible hormonal therapy. [REDACTED]. DE 1, pp. 1-3

(10) [REDACTED], in part:

[REDACTED]: C/O suicidal thoughts and depression. Was agitated; and recently used alcohol. ETOH: 269. Diagnosis: Ethanol intoxication and depression. [REDACTED].

[REDACTED]: Seen for evaluation of pelvic pain. Medications Effexor, Flexoril, Trazodone, Albuterol. She is employed at a sub sandwich shop and smokes one pack of cigarettes a day. Physical Examination: [Within normal limits.] Cytology was suspicious for carcinoma. CT scan did not reveal any pathology. Will schedule for physical therapy and follow up with cystoscopy later.

Medical needs: chronic pelvic pain—physical therapy. Is ambulatory. Can work at any job. [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 that she was not performing SGA since [REDACTED]. But records from [REDACTED] state the Claimant works at a sandwich shop. No other evidence is available. 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 hospitalization for suicidal ideation in [REDACTED]; and a history of polysubstance abuse. Treatment improved her condition and the Claimant was advised to cease use of all addictive substances. But in [REDACTED], the Claimant came to ER and was diagnosed with Ethanol intoxication and depression. 20 CFR 416.930: Need to follow prescribed treatment.

- (a) What treatment you must follow. In order to get benefits, you must follow treatment prescribed by your physician if this

treatment can restore your ability to work, . . ., if the treatment can reduce your functional limitations so that they are no longer marked and severe.

(b) When you do not follow prescribed treatment. If you do not follow the prescribed treatment without a good reason, we will not find you disabled or blind or, if you are already receiving benefits, we will stop paying you benefits.

The medical records confirm the Claimant did not follow prescribed treatment; and continued to use addictive substances. For this reason the undersigned will not consider that the Claimant has a mental impairment preventing basic work activities. See Finding of Facts 8 and 10.

But the medical evidence has established that Claimant has a medical condition of the pelvic region; alleged by the Claimant to cause pain on sitting, standing and walking. [REDACTED] removed the Claimant's left ovary; and subsequent to the procedure, the Claimant acknowledged the pain had resolved. [REDACTED] based on his treatment of the chronic pelvic pain, released the Claimant to work at any job. See Finding of Fact 10.

The undersigned decides this opinion is persuasive that the Claimant's chronic pelvic pain is not severe; and the Claimant can perform basic work activities.

Based on lack of medical evidence that the Claimant is unable to perform basic work activities, the undersigned finds the Claimant condition is not severe within the meaning of 20 CFR 416.920(c).

Your impairment(s) must be severe and meet the duration requirement before we can find you to be disabled. You must have a severe impairment. If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. If we can find that you

are disabled or not disabled at any point in the review, we do not review your claim further. 20 CFR 916.920a(5)(c).

It is the finding of the undersigned, based upon the medical data and hearing record, that the Claimant is “not disabled” at step two because the Claimant does not have medical documentation of physical or mental impairments that are severe enough to prevent basic work activities; further review of the claim is not necessary.

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 evidence to support a finding that Claimant’s impairments meet the requirements under SSI disability standards, and prevent return to the performance of basic work activities for ninety days. This Administrative Law Judge finds the Claimant is presently “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 Medical 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: February 2, 2009

Date Mailed: February 4, 2009

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

cc:

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