

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: 2009-11538

Issue No: 2009, 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 13, 2009

Kent County DHS

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

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 May 13, 2009. Claimant appeared and testified.

ISSUES

Did the Department of Human Services properly determine that Claimant is not disabled and deny Claimant's application for Medical Assistance (MA) based on disability?

Did the Department of Human Services properly determine that Claimant is not disabled and deny Claimant's application for State Disability Assistance (SDA)?

FINDINGS OF FACT

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

(1) Claimant is a 46-year-old female. Claimant is 64 inches tall and weighs approximately 155 pounds. Claimant's education level includes 11 years of school, passing the General Education Development Test (GED) and attending one year of college.

(2) Claimant has previously been diagnosed with carpal tunnel in both hands and bilateral lateral epicondylitis (tennis elbow in both arms). In [REDACTED] and [REDACTED] Claimant had surgery that resolved her carpal tunnel symptoms. Claimant asserts disability based on nerve damage in her left arm and a chipped bone in her right elbow. (Page 55)

(3) Claimant has past relevant work as a gas station manager, management in retail stores and clerking in retail stores. On pages 11 & 12, submitted by Claimant, [REDACTED] recorded that on [REDACTED] Claimant reported being "unemployed from [REDACTED], but owns an ice cream business on the side." Claimant did not disclose any such activity in her application or during this hearing.

(4) On [REDACTED], Claimant was examined by [REDACTED]. The report of this examination is the most recent medical source evidence in the record.

(5) On August 26, 2008, Claimant applied for Medical Assistance (MA) based on disability and State Disability Assistance (SDA). In the forms submitted, Claimant reported an on the job injury in [REDACTED] which caused nerve damage in her left arm, chipped her right elbow, and caused back pain. Claimant reported she settled a lawsuit against that employer in [REDACTED]. Claimant also reported a criminal assault against her 4 years previous and that she has Post-Traumatic Stress but has never seen a psychiatrist about it.

(6) On October 1, 2008, the Department of Human Services Medical Review Team determined that Claimant was not disabled in accordance with the standards for Medical Assistance (MA) or State Disability Assistance (SDA).

(7) On October 10, 2008, Claimant was sent notice of the Department's determination.

(8) On December 17, 2008, Claimant submitted a request for hearing.

(9) From December 2008 to February 2009 Claimant worked as manager of a gas station. Claimant reports she left that employment because the activity caused pain in her arms.

(10) On February 6, 2009, the Department of Human Services State Hearing Review Team determined that Claimant was not disabled in accordance with the standards for Medical Assistance (MA) or State Disability Assistance (SDA).

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 400.10, *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).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *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). Disability determinations done by the State of Michigan for Medical Assistance (MA) based on disability use the Social Security Administration standards found in United States Code of Federal Regulations (CFR) at Title 20, Part 416. The law defines disability 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 at least 12 months. To meet this definition, you must have severe impairments that make you unable to do your past relevant work or any other substantial gainful work that exists in the national economy.

Disability determinations done by the State of Michigan, for State Disability Assistance (SDA), use the same standards with one minor difference. For State Disability Assistance (SDA) the medically determinable physical or mental impairments that prevent substantial gainful activity must result in death or last at least 90 days.

In accordance with the Federal Regulations an initial disability determination is a sequential evaluation process. The evaluation consists of five steps that are followed in a set order.

STEP 1

At this step, a determination is made on whether Claimant's is engaging in substantial gainful activity (20 CFR 416.920(b)). If you are performing activities for pay or profit, we will use 20 CFR 416.971 through 416.975 to evaluate the activities to determine if they are substantial gainful activity. Substantial gainful activity is defined as work activity: that is both substantial and gainful; and involves doing significant physical or mental activities. Gainful work activity is work activity that you do for pay or profit (20 CFR 416.972). If you are engaged in SGA, you are not disabled regardless of how severe your physical or mental impairments are and regardless of your age, education, and work experience.

Claimant testified that she is not currently employed or doing any activity for pay or profit. Claimant is not engaged in substantial gainful activity. The analysis of Claimant's disability assertion will continue.

STEP 2

At the second step, it is determined whether you have a severe physical or mental impairment that meets the duration requirement or a combination of impairments that is severe and meets the duration requirement (20CFR 416.920). An impairment or combination of impairments is severe within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. When we talk about basic work activities, we mean the abilities and aptitudes necessary to do most jobs. Examples of these 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.

An impairment or combination of impairments is not severe if it does not significantly limit your physical or mental ability to do basic work activities (20 CFR 416.921).

In addition to the limiting effect of the impairments they must also meet durational requirements, 90 days for State Disability Assistance (SDA) and 12 months for Medical Assistance (MA) based on disability. If we determine that your impairments are not severe, you are not disabled.

Claimant asserts disability based upon nerve damage in both arms. A summary of the evidence in the record regarding Claimant's arms follows.

There is a [REDACTED] physical examination done by [REDACTED] (Pages 25 & 26) [REDACTED] determined that Claimant had symptoms consistent with bilateral carpal tunnel syndrome based on nerve conduction studies. The Doctor also found evidence of bilateral lateral epicondylitis (tennis elbow in both arms). The Doctor reported that Claimant elected to proceed with surgery for the carpal tunnel.

There is documentation of Claimant's left carpal tunnel surgery and follow up done in [REDACTED] by [REDACTED]. (Pages 29 & 32)

There is documentation of Claimant's right carpal tunnel surgery and follow up done in [REDACTED] by [REDACTED]. (Pages 35 & 36)

There is an [REDACTED] examination report done by [REDACTED]. (Page 38) The Doctor reports that Claimant's carpal tunnels are doing fine. The Doctor also reports that Claimant is having bilateral elbow pain. Claimant reported having improvement in her right elbow but persistent problems with the left elbow. The Doctor noted he did not find any indications for surgery to address the problems.

There is a [REDACTED] evaluation report done by [REDACTED]. (Pages 39-48) At this evaluation Claimant reported her hands were doing well and the main problem was elbow pain, primarily on the left side. The Doctor's diagnosis was left lateral epicondylitis (tennis elbow). The Doctor stated Claimant's carpal tunnel was resolved and her right elbow did not require any work restrictions. The Doctor identified only two work restrictions for Claimant's left elbow: no specific limit on weight lifted but to do all lifting with palm up as opposed to palm down; and no highly repetitive forceful, prolonged gripping and squeezing with the left hand. The Doctor opined that Claimant's symptoms may well resolve spontaneously and she would be capable of returning to full unrestricted activities, otherwise he recommended

Cortisone injection or possible surgical intervention. The Doctor specifically wrote “She is not at MMI (maximum medical improvement) for the left elbow. There is no indication she is going to require permanent impairment rating in the future.” The Doctor recommended Claimant follow up with [REDACTED]. This evaluation is the most recent one submitted by Claimant to support her assertion of disability.

20 CFR 416.929 says that statements about your pain or other symptoms will not alone establish that you are disabled, there must be medical signs and laboratory findings which show that you have a medical impairment(s) which could reasonably be expected to produce the pain or other symptoms alleged. The objective medical evidence in the record does not show that Claimant’s impairments significantly limit her ability to do basic work activities. An impairment or combination of impairments is not severe if it does not significantly limit your physical or mental ability to do basic work activities (20 CFR 416.921).

The medical evidence of record is not sufficient to establish that claimant has severe impairments that meet the 90 day duration requirements for State Disability Assistance (SDA) or the 12 month duration requirements for Medical Assistance (MA) based on disability. Therefore, claimant is disqualified from receiving disability at this step.

For purposes of a thorough and complete evaluation of Claimant’s disability assertion, the evaluation will continue.

STEP 3

At the third step, it is determined whether your impairments meet or equal the criteria of an impairment listed in a Social Security Administration impairment listing 20 CFR Part 404, Subpart P, Appendix 1. If your impairment meets or equals the criteria of a listing and meets the duration requirement, you are disabled.

Claimant's asserted arm nerve damage impairment was compared with the Social Security Administration impairment listing 1.02 Major dysfunction of a joint(s) (due to any cause). That listing is:

1.02 Major dysfunction of a joint(s) (due to any cause): Characterized by gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:

A. Involvement of one major peripheral weight-bearing joint (*i.e.*, hip, knee, or ankle), resulting in inability to ambulate effectively, as defined in 1.00B2b;

or

B. Involvement of one major peripheral joint in each upper extremity (*i.e.*, shoulder, elbow, or wrist-hand), resulting in inability to perform fine and gross movements effectively, as defined in 1.00B2c.

Claimant's tennis elbow did not meet or equal this listing because the objective medical evidence only shows impact on one upper extremity.

STEP 4

At the fourth step, we assess your residual functional capacity (RFC) to determine if you are still able to perform work you have done in the past. Your RFC is your ability to do physical and mental work activities on a sustained basis despite limitations from your impairments. Your RFC is assessed using all the relevant evidence in the record. If you can still do your past relevant work, you are not disabled under these standards.

Claimant reports past relevant work as a gas station manager, management in retail stores and clerking in retail stores. At this hearing, Claimant testified that she worked as a gas station manager between December 2008 and February 2009. Claimant specifically asserted she left that work because the activities of work cause her arms to be agitated and sore.

The most recent objective medical evidence in the record is a [REDACTED] evaluation report done by [REDACTED] (Pages 39-48) At this evaluation, Claimant reported her hands were doing well and the main problem was elbow pain, primarily on the left side. The Doctor's diagnosis was left lateral epicondylitis (tennis elbow). The Doctor stated Claimant's carpal tunnel was resolved and her right elbow did not require any work restrictions. The Doctor identified only two work restrictions for Claimant's left elbow: no specific limit on weight lifted but to do all lifting with palm up as opposed to palm down; and no highly repetitive forceful, prolonged gripping and squeezing with the left hand. The Doctor opined that Claimant's symptoms may well resolve spontaneously and she would be capable of returning to full unrestricted activities, otherwise he recommended Cortisone injection or possible surgical intervention. The Doctor specifically wrote "She is not at MMI (maximum medical improvement) for the left elbow. There is no indication she is going to require permanent impairment rating in the future." There is no more recent objective medical evidence in the record showing whether Claimant's medical condition continued to be consistent with her reported symptoms.

Classifications of work based on physical exertion requirements are defined in 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.

(b) *Light work.* Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when

it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

(c) *Medium work.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work.

(d) *Heavy work.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work.

Even using the work restrictions from May 2008, Claimant has the RFC to perform sedentary and light work. [REDACTED] did not restrict the amount of weight Claimant could lift. The Doctor only conditioned that the lifting should be done in a palm up orientation and not with Claimant's palm oriented downward. Even though [REDACTED] did not restrict the amount of weight Claimant could lift, an RFC of only sedentary and light work should preclude the recurrence of the problems Claimant had with her elbows. Most of Claimant's past relevant work would fall within or below light work. While Claimant's reported past work involves multiple uses of her hands for numerous actions, they would not require highly repetitive forceful, prolonged gripping and squeezing with the left hand. Claimant has the RFC to perform past relevant work. Claimant is found ineligible at this step also.

STEP 5

At the fifth step, your residual functional capacity (RFC) is considered along with your age, education, and work experience to see if you can make an adjustment to other work you have not previously done. If you have a combination of sufficient remaining abilities and

transferable skills to adjust to other work, you are not disabled. If it is determined that you cannot make an adjustment to other work, we will find that you are disabled.

Claimant is a younger individual with a high school and above education, a history of skilled work, and the residual functional capacity to do sedentary and light work. In accordance with Social Security Administration Medical-Vocational Guidelines Rule 201.21 for sedentary work, Claimant is not disabled. In accordance with Social Security Administration Medical-Vocational Guidelines Rule 202.21 for light work, Claimant is not disabled. Claimant is found ineligible at this step also.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services properly determined that Claimant is not disabled and denied Claimant's application for Medical Assistance (MA) based on disability and State Disability Assistance (SDA).

It is ORDERED that the actions of the Department of Human Services, in this matter, are UPHELD.

/s/ _____
Gary F. Heisler
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: January 15, 2009

Date Mailed: January 16, 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 mailing 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.

CFH

cc:

