

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: 2009-13116

Issue No: 2009, 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 21, 2009

Iosco 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 21, 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 48 year old female. Claimant is 62 inches tall and weighs

approximately 184 pounds. Claimant's formal education consists of 9 years of school and completion of a GED.

(2) Claimant has past relevant work experience as a cashier and customer service supervisor.

(3) Claimant has been diagnosed with diabetes and has a history of back and body pain along with sleep problems. Claimant asserts disability based on all these medical conditions.

(4) Claimant last worked in July 2008, as a customer service supervisor. Claimant reports she left that employment and went on short term disability due to her diabetes being out of control.

(5) On October 23, 2008, Claimant applied for Medical Assistance (MA) based on disability and State Disability Assistance (SDA).

(6) On December 17, 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 December 22, 2008, Claimant was sent notice of the Department's determination.

(8) On January 15, 2009, Claimant submitted a request for hearing.

(9) On May 29, 2009, the 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.

At step 1, a determination is made on whether Claimant 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 substantial gainful activity, you are not disabled regardless of how severe your physical or mental impairments are and regardless of your age, education, and work experience.

Based on the evidence in the record and Claimant's testimony, Claimant is not engaged in substantial gainful activity.

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 diabetes and a history of back and body pain along with sleep problems. Claimant last worked in July 2008, and reports she left that employment and went on short term disability due to her diabetes being out of control. What follows is a synopsis of all relevant evidence in the record from medical sources presented in chronological order.

There is a medical examination by [REDACTED] dated March 11, 2009. (Pages A1- A3) [REDACTED] found that Claimant had a positive right leg straight leg raise test, reduced range of motion in the dorsolumbar spine, some numbness in both feet, and moderate difficulty doing orthopedic maneuvers. The Doctor concluded that Claimant has diabetes and low back pain.

There is a Medical Examination Report (form DHS-49) completed by [REDACTED] on November 12, 2008. The Doctor listed his specialty as family practice. The Doctor had the impression that Claimant was slowly improving and wrote down "01 Jan 09?" as a date to return to work. The Doctor recommended Claimant be restricted to lifting less than 10 pounds

occasionally and standing or walking less than 2 hours per 8 hour work day. The Doctor recommended Claimant not perform any repetitive actions with hands and arms or feet and legs. Tremor, unstable blood sugar, and peripheral neuropathy were listed as the medical findings to support the physical limitations.

Claimant has medical conditions which limit her ability to perform work activities. Claimant's medical impairments have lasted more than 90 days, however, the objective medical evidence of record is not sufficient to establish they have lasted or are expected to last 12 months or more.

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 back pain was compared with the Social Security Administration impairment listing 1.04 Disorders of the spine. While Claimant had a positive straight leg raise test, there is no medical imaging evidence in the record to establish the actual condition causing Claimant's pain. A comparison to this listing cannot be done because it requires medical imaging to determine the actual condition causing pain.

Claimant's diabetes was compared to Social Security Administration impairment listing 9.08 Diabetes mellitus. That listing is:

9.08 Diabetes mellitus. With:

- A. Neuropathy demonstrated by significant and persistent disorganization of motor function in two extremities resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C); or
- B. Acidosis occurring at least on the average of once every 2 months documented by appropriate blood chemical tests (pH or PCO₂ or bicarbonate levels); or

- C. Retinitis proliferans; evaluate the visual impairment under the criteria in 2.02, 2.03, or 2.04.

Claimant's medical condition does not meet or equal this listing.

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 cashier and customer service supervisor. At this hearing Claimant specifically asserted she cannot work because her blood sugar is high and she has back pain. Claimant last worked in July 2008, and reports she left that employment and went on short term disability due to her diabetes being out of control. On the Medical Examination Report (form DHS-49) done by [REDACTED] on November 12, 2008, the Doctor had the impression that Claimant was slowly improving and wrote down "01 Jan 09?" as a date to return to work. At this hearing Claimant testified that she was cleared to return to work February 26, 2009.

Your residual functional capacity is your remaining physical, mental, and other abilities. Those abilities are outlined in 20 CFR 416.945.

Physical abilities. When we assess your physical abilities, we first assess the nature and extent of your physical limitations and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to perform certain physical demands of work activity, such as sitting, standing, walking, lifting, carrying, pushing, pulling, or other physical functions (including manipulative or postural functions, such as reaching, handling, stooping or crouching), may reduce your ability to do past work and other work.

Mental abilities. When we assess your mental abilities, we first assess the nature and extent of your mental limitations and restrictions and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to carry out certain mental activities,

such as limitations in understanding, remembering, and carrying out instructions, and in responding appropriately to supervision, coworkers, and work pressures in a work setting, may reduce your ability to do past work and other work.

Other abilities affected by impairment(s). Some medically determinable impairment(s), such as skin impairment(s), epilepsy, impairment(s) of vision, hearing or other senses, and impairment(s) which impose environmental restrictions, may cause limitations and restrictions which affect other work-related abilities. If you have this type of impairment(s), we consider any resulting limitations and restrictions which may reduce your ability to do past work and other work in determining your residual functional capacity.

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.

In this case the evidence as a whole shows that Claimant's medical condition has improved since [REDACTED] November 12, 2008, recommendation of physical work restrictions. In fact Claimant testified that she had been medically cleared to return to work from her short term disability leave. On March 11, 2009, [REDACTED] described Claimant as having had a positive right leg straight leg raise test, reduced range of motion in the dorsolumbar spine, some numbness in both feet, and moderate difficulty doing orthopedic maneuvers.

Based on the evidence in the record, I find that Claimant has the residual functional capacity (RFC) to perform light work. Claimant's past relevant work as a customer service supervisor is within her RFC. Claimant is found ineligible at this step because she can perform past relevant work. In order to conduct a thorough evaluation of Claimant's disability assertion, the analysis will continue.

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 48 years old with a high school equivalent education, an unskilled work history, and the residual functional capacity to do light work. In accordance with Social Security Administration Medical-Vocational Guidelines Rule 202.20 Claimant is not disabled.

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 determine 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: August 13, 2010

Date Mailed: August 16, 2010

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.

2009-13116/GFH

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.

GFH/alc

cc:

