

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: 2009-13241

Issue No: 4031, 2009

Case No:

[REDACTED]

Load No:

Hearing Date:

May 13, 2009

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

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 filed on November 5, 2008. After due notice, a telephone hearing was held on May 13, 2009. The Claimant was present and testified. [REDACTED], Claimant's mother, also testified on behalf of Claimant. Angela Clark, MCW Specialist appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA") and State Disability Assistance ("SDA") programs.

FINDINGS OF FACT

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

1. Claimant filed for MA and SDA on 12/12/08. Claimant requested MA and SDA retroactive to September 2008.
2. Claimant is 5'8" tall and weighs 210 pounds.

3. Claimant is 33 years of age.
4. Claimant's impairments have been medically diagnosed as Multiple Sclerosis, visual disturbances, vertigo, depression and anxiety.
5. Claimant's physical symptoms are fatigue; numbness in hands, feet, legs and groin area; pain in back, neck; throbbing in legs; blurriness and distortion in right eye; dizziness; and difficulty walking.
6. Claimant's mental symptoms are depression, anxiety memory problems, loss of concentration, panic attacks, crying spells, confusion, nervousness and fatigue.
7. Claimant takes the following prescriptions:
 - a) Adavan - anxiety
 - b) Zoloft – anti depressant
 - c) Baclofen – MS muscle spasms
 - d) Vicodin – 3x/day for back and neck pain
 - e) Copaxone – MS, injection every day
 - f) Ambien – sleeping pill, not every day
8. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
9. Claimant has a 10th grade education. Claimant testified that she failed math portion of the GED.
10. Claimant is able to read and write.
11. Claimant last worked on November of 2008 for a medical doctor doing transcription, cleaning rooms, take patients to rooms, answer phones and take x-rays of patient's feet. This job involved lots of bending and stooping. Claimant left this job due to her MS and symptoms of exhaustion, eye problems and anxiety. Claimant testified that she could not be relied upon.
12. Claimant has prior employment experience as part time [REDACTED] carrier, a lab technician for raw materials company testing samples at warehouse to make sure okay to send out, proof department of bank (ran debit and credit machines) and Claimant was also a teller for a short time.
13. Claimant testified to the following physical limitations:
 - Sitting: cl needs to move around
 - Standing: ½ hour
 - Walking: into, around and out of grocery store. Could walk ½ mile, but not a mile
 - Bend/stoop: Hard to get back up.
 - Lifting: Can lift gallon of milk

- grip/grasp – sometime cannot even hold dinner plate. Cl drops things.
- 14. Claimant performs household chores such as sweeping, cooking (mostly microwave or frozen foods), grocery shopping, loads and unloads dishwasher, dusting, and cleaning the bathrooms.
- 15. Claimant’s mother and witness testified that the MS has turned Claimant into a completely different person. Claimant cannot walk ½ mile except assisted. Mom helps her clean up and pick up, and helps her get medicine. Claimant can go to the grocery store but she comes home exhausted. Claimant is not mentally stable enough to carry on a conversation anymore.
- 16. The Department found that Claimant was not disabled and denied Claimant’s application on 1/6/09.
- 17. Medical records examined are as follows, in part:

██████████, Family Practice Medical Exam Report (Exhibit 1, p. 9, Exhibit 2, pp. 1-2)

HX of IMPAIRMENTS: diagnosed with MS 2007. Episodes of right arm numbness, fatigue, headaches & neck pain.

CURRENT DX: Multiple sclerosis, Depression

CLINICAL IMPRESSIONS: Deteriorating

PHYSICAL LIMITATIONS:

- Lifting up to 20 lbs. occasionally
- Stand/walk less than 2 hours in 8 hour day
- Sitting less than 6 hours in 8 hour day

MENTAL LIMITATIONS: Limited in sustained concentration, and social interaction

██████████ - Family Practice Examination Notes (Exhibit 2, p. 3)

Follow up from hospital admission on 3/5/09 for vertigo. Disturbance in R eye for one month.

- She speaks in a halting way. She’s rather slow with all her muscle movements. She has a slow, deliberate gait

██████████ Hospital ER admission (Exhibit 2, pp. 5-6, 63-75)

Admitted b/c of new onset dizziness for the last week. The patient stated that the room is spinning. The patient has worsening of the

vision in the right eye for 1 month. She is also having more balance problems.

FINAL DIAGNOSIS: Acute exacerbation of multiple sclerosis.

Neurology Progress Notes [REDACTED], (Exhibit 2, pp. 8-13)

11/26/08 – Patient has general fatigue and numbness in left hand. She feels shakiness especially with walking down stairs. She has good days and bad. She feels worse as the day progresses.

MRI Brain, [REDACTED]

There is an abnormal white matter pattern which appears consistent with a moderate demyelinating pattern.

MRI Cervical Spine with Contrast, [REDACTED]

1. Abnormal enhancing lesion within the cervical spinal cord posteriorly in the right C4 vertebral body level and scattered predominantly central white matter plaques in the supratentorial white matter of the brain. The pattern is most consistent with a relatively acute appearing demyelination pattern and appropriate clinical correlation suggested for MS

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 CFR 416.905.

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.

1. Current Substantial Gainful Activity

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). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. “Substantial work activity” is work activity that involves doing significant physical or mental activities. 20 CFR 416.972(a). “Gainful work activity” is work that is usually done for pay or profit, whether or not a profit is realized. 20 CFR 416.972(b). Generally if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that she has the demonstrated ability to engage in SGA. 20 CFR 416.974 and 416.975. If an individual engages in SGA, she is not disabled regardless of how severe her physical and mental impairments are and regardless of her age, education and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

In this case, under the first step, the Claimant last worked in November of 2008. Therefore, the Claimant is not disqualified from receipt of disability benefits under Step 1.

2. Medically Determinable Impairment – 12 Months

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 F.2d 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 F.2d 860, 862 (6th Cir. 1988); *Farris v Sec’y of Health & Human Servs*, 773 F.2d 85, 90 (6th Cir. 1985).

In this case, the Claimant has presented medical evidence showing a diagnosis of multiple sclerosis in 2007 with associated numbness in the extremities, fatigue, and depression. Claimant also has been placed on physical limitations by her treating physicians. Claimant’s MS has gotten progressively worse and Claimant’s medical condition was recently classified as

deteriorating. The medical evidence has established that Claimant has physical and mental impairments that have more than a minimal effect on basic work activities; and Claimant's impairments have lasted continuously for more than twelve months. It is necessary to continue to evaluate the Claimant's impairments under step three.

3. Listed Impairment

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 discusses the analysis and criteria necessary to a finding of a listed impairment. The Listing 11.09 *Multiple Sclerosis* was reviewed and reads as follows:

11.09 *Multiple sclerosis*. With:

- A. Disorganization of motor function as described in 11.04B; or
- B. Visual or mental impairment as described under the criteria in 2.02, 2.03, 2.04, or 12.02; or
- C. Significant, reproducible fatigue of motor function with substantial muscle weakness on repetitive activity, demonstrated on physical examination, resulting from neurological dysfunction in areas of the central nervous system known to be pathologically involved by the multiple sclerosis process.

The listing is further described in 11.00(E)

"Use of the criteria in 11.09C is dependent upon (1) documenting a diagnosis of multiple sclerosis, (2) obtaining a description of fatigue considered to be characteristic of multiple sclerosis, and (3) obtaining evidence that the system has

actually become fatigued. The evaluation of the magnitude of the impairment must consider the degree of exercise and the severity of the resulting muscle weakness.

20 CFR 404, Appendix 1, Subpart P, Rule 11.00.

In this case, this Administrative Law Judge finds the Claimant is not presently disabled at the third step for purposes of the Medical Assistance (MA) program because the medical evidence reviewed does not show that the physical impairments meet the intent or severity of the listings. While Claimant has documented multiple sclerosis and associated fatigue, the physical examinations that Claimant has undergone do not specifically show muscle weakness on repetitive activity. Sequential evaluation under step four or five is necessary. 20 CFR 416.905.

4. Ability to Perform Past Relevant Work

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 one can do in a work setting. RFC is the most one can still do despite limitations. All the relevant medical and other evidence in the case record applies in the assessment.

Claimant has presented medical evidence supporting multiple sclerosis with associated fatigue and vertigo and eye disturbances. Claimant's prior employment included medical office assistant, part-time [REDACTED] carrier, lab technician for raw materials company testing samples and bank cashier. The medical office assistant involved a lot of bending and stooping as Claimant cleaned the rooms and took x-rays of the patient's feet. The other jobs also required standing most of the day. Given the exertional requirements of standing, the jobs would be considered to be at the light exertional level. Claimant has been placed on physical limitations

by her treating physician of standing/walking less than two hours in an eight hour day and sitting less than six hours in an eight hour day. Therefore, the undersigned finds the Claimant currently limited to sedentary work. Claimant is unable to return to past relevant work in any of the above listing prior occupations. Evaluation under step five will be made according to the law.

5. Ability to Perform Other 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 N.W.2d 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 at the level of sedentary work. Sedentary work is described as follows:

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.

20 CFR 416.967(a). Claimant's most recent doctor recommended physical limitation dictates that Claimant is limited to lifting less than 20 lbs occasionally throughout the day and

standing/walking less than two (2) hours per eight hour day. Therefore, Claimant would be limited to sedentary work. 20 CFR 416.967.

Claimant at thirty-three (33) is considered a *younger individual*; a category of individuals in age group 18-44 when age is a more advantageous factor for making adjustment to other work. “It is usually not a significant factor in limiting such individual’s ability to make an adjustment to other work, including an adjustment to unskilled sedentary work, even when the individuals are unable to communicate in English or are illiterate in English.” 20 CFR 404, Appendix 2 to Subpart P, Rule 201.20. Claimant’s education is “limited or less – at least literate and able to communicate in English” and her previous work experience is semi-skilled. Looking at Claimant’s medical condition alone, Claimant would not meet the requirements for disability as Claimant could likely find a sedentary semi-skilled job in a clerical setting.

However, in addition to Claimant’s MS with fatigue, vertigo, and visual disturbances, Claimant suffers from depression and anxiety. The undersigned observed Claimant crying throughout the entire hearing process. Claimant’s mother testified that Claimant has turned into a different person and that Claimant is not even capable of carrying on a conversation. Claimant avoids going out in public. Claimant is taking Advan for anxiety and Zoloft for depression. Furthermore, Claimant’s physician indicated that Claimant is limited in sustained concentration and social interaction. Claimant’s mental impairments must be considered in conjunction with her physical limitations.

The Administrative Law Judge finds that the combination of Claimant’s mental and physical impairments and limitations have a major effect upon claimant’s ability to perform basic work activities. Claimant is unable to perform the full range of activities for even sedentary work as defined in 20 CFR 416.967(a) because of the nature of the limitations. The

total impact caused by the combination of medical problems suffered by the claimant must be considered. The combination of claimant's impairments result in a severe impairment which limits claimant's ability to work. 20 CFR 404.1529.

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 evidence to support a finding that Claimant's impairment is disabling her under SSI disability standards. This Administrative Law Judge finds the Claimant is "disabled" for purposes of the MA 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 program and the State Disability Program.

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

Accordingly, The Department is ORDERED to initiate a review of the 12/12/08 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 June 2010.

/s/

Jeanne M. VanderHeide
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 07/08/09

Date Mailed: 07/08/09

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 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.

JV/dj

cc:

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