

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Claimant

Reg. No.: 2009-1451
Issue No.: 2009, 4031
Case No.:
Load No.:
Hearing Date:
December 15, 2008
Wayne County DHS (19)

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 December 15, 2008. The Claimant appeared at the Department of Human Service (Department) in Wayne County

The record was left open to obtain new medical information. Claimant waived the closure date on the record. The medical information was submitted to the SHRT and the application was denied. 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) 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 for MA-P and SDA on June 19, 2008.
- (2) On August 26, 2008 the Department denied the application; and on April 10, 2009 the SHRT determined a non-severe impairment per 20 CFR 416.920(c).
- (3) On September 4, 2008 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-seven years of age.
- (5) Claimant completed grade 12 and two years college; and can read and write English and perform basic math.
- (6) Claimant last worked in 2005 as a waitress then two year incarceration; released June 2008 and before was a housewife.
- (7) Claimant has alleged a medical history of fatigue from Graves Disease and not taking medication, seizure disorder and not taking medications, emphysema using inhalers, hepatitis C and right sided neck/arm pain/pinched nerve; and post traumatic stress disorder without treatment.
- (8) July 2008, in part:

CURRENT DIAGNOSIS: Atrial fibrillation, fatigue, anxiety, prolapsed uterus and needs surgery per ER doctor.

HT: 66", WT: 162-63, BP 100/82, Vision uncorrected: right 20/25, left 20/25.

NORMAL EXAMINATION AREAS: General; HEENT; Respiratory; Cardiovascular, Abdominal, Musculoskeletal, Neuro, Mental.

FINDINGS: Abdominal: mid and low discomfort.

CLINICAL IMPRESSION: Stable.

PHYSICAL LIMITATIONS: Expected to last over 90 days; Lifting/carrying up to 20 pounds 1/3 of 8-hour day; stand and/or

walk at least 2 hours in 8 hour day; sit about 6 hours in 8 hour day; no assistive devices are needed; use of both hand/arms for simple grasping, reaching, pushing/pulling, fine manipulating, use of both feet/legs for operating controls. Can meet own need in home. MENTAL LIMITATIONS: None. Medications: [REDACTED] Department Exhibit (DE) 1, pp. 14-16.

(9) July, October and November 2008, in part:

July: To ER for pelvic pain, abdominal and back pain; and vaginal discharge. Physical Examination: [All systems within normal limits.] Clinical Impression: Cervicitis. Instructions: "You probably have an intermittent uterine prolapse (none now)." Discharged in stable condition with [REDACTED] prescribed. See [REDACTED] in 5-10 days. [REDACTED]

October: To ER with abdominal pain. Laparoscopic cholecystectomy performed without complications. Smoker of one-pack per day for several years. Ultrasound abdomen showed dilated gallbladder without stones and dilated common bile duct. Without obstruction. Physical Examination [All systems within normal limits.] Except exothalamous and abdominal pain. Discharged in fair condition [REDACTED].

November: To ER for neck and wrist pain on right side for two weeks. Moves all extremities without difficulty and has full range of motion all extremities. Cervical Spine X-rays: Mild right facet osteoarthritis change is causing neural foraminal narrowing at C3/C4, C4/C5, and C5/C6. Cervical Spine X-rays: Mild right facet osteoarthritis change is causing neural foraminal narrowing at C3/C4, C4/C5, and C5/C6. Extremity Duplex Veins: Impression: no evidence of deep vein thrombosis right upper extremity from internal jugular to radial/ulnar veins. Clinical Impression: Cervical radiculopathy. Treated medically. Discharged in stable condition. [REDACTED] Department Exhibit New, pages 1-42

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.

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 at hearing to not performing SGA since 2005. 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)

The medical evidence has established that Claimant had osteoarthritis changes to her cervical spine. See finding of facts 8-9. The undersigned finds based on the medical records that the Claimant has physical impairments which are more than minimal, which effect basic work activities, and will last for the rest of the Claimant’s life. There were no medical records establishing mental impairments that prevent 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 physical impairments are 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 her impairments 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.

The medical evidence established cervical osteoarthritis. There were no other physical impairments established in the medical records or medically prescribed physical limitations due to physical dysfunction. All systems were normal. See finding of facts 8-9.

Appendix I, Subpart P of 20 CFR, Part 404, Listings discusses the analysis and criteria necessary to a finding of a listed impairment. The undersigned's decision was based on Listing 1.00 *Musculoskeletal System*. The most important criteria that must be established in the medical records are loss of function. That criteria of loss of upper and lower extremity function was not established in the medical records submitted.

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 impairments do not meet listing level requirements. 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 Claimant 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. See 20 CFR 416.945.

The Claimant was able to physically function as set out by Dr. Shelby-Lane. Past relevant work in 2005 was waitress type work. At hearing the Claimant testified to not being able to return to waitress type work. For this reason the undersigned decides the Claimant cannot return 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 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 forty-seven is considered a *younger individual*; a category of individuals age 45-49. Under Appendix 2 to Subpart P: Table No. 1—Residual Functional Capacity: Maximum Sustained Work Capability Limited to Sedentary or light work as a Result of Severe Medically

Determinable Impairment(s), Rule 201.21, for younger individual, age 45-49; education: high school graduate or more; previous work experience, skilled or semiskilled skills not transferable; the Claimant is “not disabled” per Rule 201.21.

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: 04/14/09

Date Mailed: 04/14/09

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

cc:

