

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: 2009-15245

Issue No: 2009

Case No: ██████████

Load No: ██████████

Hearing Date:

April 30, 2009

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

A hearing was held on April 30, 2009 pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department received on April 2, 2009. At the hearing, the Claimant was present and testified. Claimant was represented by ██████████ of ██████████. Tanya Bazille, ES, appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA") program.

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 on 10/23/08.
2. Claimant is 5'4" tall and weighs 175 pounds.
3. Claimant is right handed.

4. Claimant is 44 years of age and will turn 45 in [REDACTED].
5. Claimant's impairments have been medically diagnosed as chronic blood clots (DVT) and torn ligament in ankle ([REDACTED]).
6. Claimant's physical symptoms are sharp, severe pain on left side, also recently on right, swollen legs, right ankle pain, and interrupted sleep due to pain from blood clots.
7. Claimant was hospitalized on [REDACTED].
8. Claimant takes the following prescriptions:
 - a) Coumadin
 - b) Percoset for pain (4-5 months, last December)
9. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
10. Claimant has a High school education. She also has administrative legal secretary training and a certificate through the [REDACTED]. Claimant has computer skills of word processing.
11. Claimant is able to read, write, and perform basic math skills.
12. Claimant last worked [REDACTED] as a retail assistant manager for a hardware store. Claimant was required to lift up to 40 lbs. as she unloaded trucks 3x/week. Stocked, priced, merchandised, and ordered.
13. Claimant has prior employment experience as: clothing Retail, gas station cashier, waitress/hostess, cashier at doughnut shop, doughnut maker, and data entry clerk.
14. Claimant testified to the following limitations:
 - Sit: ½ hour to an hour
 - Stand: not even ½ hour at a time
 - Walk: 15-20 feet at most at a time. Severe pain and starts swelling. Claimant uses cart at grocery store
 - bend/stoop: really hard to bend. L knee issue
 - lift – Dr. doesn't want claimant to lift anything.
 - grip/grasp – no problems.
15. Claimant performs household chores such as washing dishes (if can do w/in 5 minutes), light cleaning (vacuuming, and dusting end table), mopping kitchen floor, and scrubbing toilet and bath tub. Claimant's son will pull out couch or refrigerator. Claimant has no outside responsibilities and her son takes the trash out.

16. The record was left open to obtain a DHS 49 from Claimant's treating physician. No additional medical records were submitted.
17. The Department found that Claimant was not disabled and denied Claimant's application on [REDACTED].
18. Medical records examined are as follows:

[REDACTED], Vascular Surgery, [REDACTED] Medical Exam Report (Exhibit 1, pp. 6-7)

CURRENT DIAGNOSIS: Right DVT – acute, Right lower extremity with chronic clots throughout the right venous system from Deroneal up to femoral at total occlusion in the femoral popiteal.

GENERAL: Ambulating with crutches & or walker. Non weight bearing on right lower extremity.

PHYSICAL LIMITATIONS: No lifting – Non weight bearing on lower extremity R prevents this. Stand/walk – less than 2 hrs in an 8 hr work day

[REDACTED] Hospital Admission [REDACTED], in part, (Exhibit 1, pp. 12- 29, 30-50, 59-63, 65-98)

Patient has history of lower extremity DVTs and PE requiring Greenfield filter placement as well as anticoagulation with Coumadin in 2007. Patient sprained right ankle and then had increased right lower extremity pain and swelling. Patient underwent thrombectomy/thrombolysis. DVT scan revealed chronic clot throughout her right venous system. Patient was admitted and underwent iliac vein recannalization and stenting on [REDACTED]. Physical and occupational therapy following surgery.

[REDACTED] Hospital Doppler Study, [REDACTED] (Exhibit 1, p. 20-21)

Right: Duplex evaluation of the right lower extremity reveals evidence of Chronic DVT involving the distal External iliac vein, involving the Common femoral vein, involving the Femoral vein, involving the Popliteal vein, involving the Posterior tibial veins, and involving the Peroneal veins. Cannot r/o DVT in the Anterior tibial veins due to edema.

Left: Duplex evaluation of the left lower extremity reveals evidence of Chronic DVT involving the Popliteal vein. Cannot r/o DVT in the distal external iliac vein due to pain.

[REDACTED] Hospital Admission [REDACTED], in
part, (Exhibit I, pp. 25-29 51-58)

Patient presented with saddle pulmonary embolism.

- [REDACTED] – IVC filter placement
- [REDACTED] – Right IJ and right arterial line placed

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.

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 December of 2006. 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 medical diagnoses of chronic blood clots (DVT) and torn ligament in ankle. In addition, Claimant is under physical restrictions as a result of the chronic blood clots. Therefore, the medical evidence has established that Claimant has physical impairments that have more than a minimal effect on basic work activities. Furthermore, 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 under 7.0 *Hematological Disorders* was reviewed. Furthermore, Social Security Ruling 02-01 directs adjudicators to consider that the combined effects of obesity with other impairments may be greater than the non-obesity impairment alone. The National Institute of Health Clinical Guidelines for Obesity defines three levels of obesity. Level I includes Body Mass Index (BMIs) of 30.0-34.9, Level II includes BMIs of 35.0-39.9 and Level III extreme obesity is considered over 40.0. Obesity at Level III represents a condition which creates the greatest risk for developing obesity related impairments. The Claimant's weight was 175 lbs and she was 5'4" in height on the date of the hearing. The Claimant's obesity as measured by her BMI was calculated using the Center for Disease Control and Prevention Body Mass Index calculation found at:

http://cdc.gov/nccdphp/dnpa/bmi/adult_BMI/english_bmi_calculator/bmi_calculator.htm

The formula for calculating BMI is as follows: Calculate BMI by dividing weight in pounds by height in inches squared and multiplying by a conversion factor of 703. This formula as applied to the Claimant's height and weight yields a BMI 30.0, or Level I obesity.

Social Security Ruling SSR-02 provides in pertinent part:

Because there is no listing for obesity, we will find that an individual with obesity "meets" the requirements of a listing if he or she has another impairment that, by itself, meets the requirements of a listing. We will also find that a listing is met if there is an impairment that, in combination with obesity, meets the requirements of a listing. For example, obesity may increase the severity of coexisting or related impairments to the extent that the combination of impairments meets the requirements of a listing.

This is especially true of musculoskeletal, respiratory, and cardiovascular impairments. It may also be true for other coexisting or related impairments, including mental disorders.

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 with or without the combination of level I Obesity. 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 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.

Claimant has presented medical evidence supporting chronic blood clots (DVT) and torn ligament in ankle. Claimant's prior employment included retail assistant for hardware store, cashier, clothing retail clerk, waitress/hostess, donut maker and legal secretary. These jobs are all essentially all considered semi-skilled and require a light to medium exertional level with the exception of legal secretary which is sedentary. Claimant's vascular surgeon placed Claimant on restrictions of no lifting, and stand/walk less than 2 hours in an 8 hour day. Given these physical limitations, the undersigned finds Claimant is restricted to sedentary work and finds that

the Claimant is unable to return to past relevant work in any of the above listing prior occupations other than legal secretary.

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. 20 CFR 416.967 describes sedentary work:

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 essentially forty-five is considered a *younger individual*; a category of individuals in age group 45-49 when age is a lesser advantage factor for making adjustment to other work. The regulations indicate:

[T]he inability to perform a full range of sedentary work does not necessarily equate with a finding of "disabled." Whether an individual will be able to make an adjustment to other work requires an adjudicative assessment of factors such as the type and extent of the individual's limitations or restrictions and the extent of the erosion of the occupational base.

Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines 20 CFR 416.967, Rule 201.00(h)(iv)(3). Claimant does experience additional limitations due to her mild obesity; however, the undersigned finds that Claimant would still be able to perform sedentary activities as long as Claimant was able to sit/stand and elevate her leg.

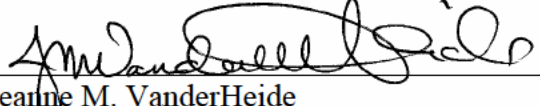
This is supported by the extent of activities that Claimant is able to perform in her household. Claimant testified that that she has pain in her legs, difficulty breathing and swollen legs requiring her to elevate them. However, Claimant also stated that she only wears her compression stockings once every couple months and she is not currently on any pain or

breathing medications. Furthermore, Claimant testified that she performs a wide variety of household chores such as washing dishes and light cleaning such as vacuuming, dusting end tables, mopping the kitchen floor, and scrubbing the toilet and the tub. Accordingly, it is the finding of the undersigned, based upon the medical data and hearing record that Claimant is “not disabled” at the fourth step as Claimant’s impairments do not prevent her from performing past relevant secretarial work.

In this case, there is sufficient evidence to support a finding that Claimant’s impairment is not disabling her under SSI disability standards. This Administrative Law Judge finds the Claimant is not “disabled” for purposes of the MA program.

DECISION AND ORDER

This Administrative Law Judge finds that the Department was correct in determining that the claimant was not disabled for the purposes of the MA program and IT IS ORDERED that the Department’s decision in this regarded is AFFIRMED.



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

Date Signed: 12/11/09

Date Mailed: 12/11/09

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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