

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 200916353
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date: May 27, 2009
Muskegon 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 27, 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 52 year old female. Claimant is 68 inches tall and weighs approximately 180 pounds. Claimant's formal education consists of 14 years of school.
- (2) Claimant has past relevant work experience in clerical, retail cashier, retail stocking, nursing aid, and embroidery operating a sewing machine.
- (3) Claimant has a history of low back pain and vision problems in her right eye. Claimant asserts disability based on these circumstances.

- (4) Claimant last worked for someone else in April 2007 and reports she left that employment because she was injured on the job. Claimant is currently self-employed doing embroidery work.
- (5) On September 18, 2008, Claimant applied for Medical Assistance (MA) based on disability and State Disability Assistance (SDA).
- (6) On November 6, 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 November 13, 2008, Claimant was sent notice of the Department's determination.
- (8) On February 4, 2009, Claimant submitted a request for hearing.
- (9) On March 26, 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).
- (10) On June 8, 2009, the State Hearing Review Team reviewed additional medical evidence submitted by Claimant and again 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 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.

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 low back pain and vision problems in her right eye. What follows is a synopsis of all relevant evidence in the record from medical sources presented in chronological order.

There are notes from [REDACTED] from a clinic visit on [REDACTED]. (Page 48) The Doctor noted that Claimant had pain at the end of her range of spinal extension.

There are notes from [REDACTED] from a clinic visit on [REDACTED]. (Page 47) The Doctor noted that Claimant had spinal nerve injections on [REDACTED] and had pain at the end of her range of spinal extension.

There are notes from [REDACTED] from a clinic visit on [REDACTED]. (Page 46) The Doctor noted that Claimant had pain at the end of her range of spinal extension and equivocal straight leg raising sign bilaterally.

There is a report from [REDACTED] from a clinic visit on [REDACTED] when Claimant received injections for spinal pain. (Page 31)

There is an EMG and nerve conduction study report from [REDACTED] dated [REDACTED]. (Page 32) The study focused on Claimant's right lower extremity and found no evidence of lumbosacral radiculopathy, plexopathy or mononeuropathy. The Doctor prescribed a plan for nerve injections.

There is physical examination report from [REDACTED] dated [REDACTED]. (Pages 33 & 34) The Doctor found Claimant had: negative straight leg raise; positive Gaenslen's sign (a test often used to test for Spondyloarthritis, sciatica or other forms of rheumatism) on the right; pain at the end range of forward flexion, extension and lateral rotation to both sides of the spine; and that Claimant's left leg is ¼ inch shorter than her right leg. The Doctor reviewed a [REDACTED] MRI scan of Claimant's lumbosacral spine.

There is an eye examination report dated [REDACTED] from [REDACTED] (Pages 26-30) The Doctor recorded that Claimant: has cataracts in both eyes with no treatment required at that time; amblyopia of the right eye; and needed new glasses.

There is a [REDACTED] MRI report of Claimant's lumbosacral spine done by [REDACTED]. (Page 2) The Doctor's impression was that Claimant has: moderate to severe multilevel degenerative disc disease; prominent posterocentral disc protrusion at L3-L4; and moderate spinal stenosis at the L3-L4 level.

The objective medical evidence of record shows that Claimant has medical conditions that could impair her physical ability to perform work type activities.

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 back pain was compared with the Social Security Administration impairment listing 1.04. That listing is:

1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine);

or

B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours;

or

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

There is no medical evidence which shows Claimant's medical condition meets these criteria.

Claimant's visual impairment was compared to Social Security Administration impairment listing 2.02. That listing is:

2.02 Loss of visual acuity. Remaining vision in the better eye after best correction is 20/200 or less.

Claimant's visual impairment did not meet or equal this listings because the uncorrected vision in her worst eye is 20/200.

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 in clerical, retail cashier, retail stocking, nursing aid, and embroidery operating a sewing machine. At this hearing Claimant specifically asserted she cannot work because she has to lie down frequently. There is no medical source evidence describing any physical or visual restrictions for Claimant. The medical source evidence does show that Claimant has conditions which could result in the pain she asserts.

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 deciding your residual functional capacity.

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.

Based on all the evidence in the record it is determined that Claimant has the residual functional capacity to perform sedentary work. Claimant's previous work in clerical, retail cashier and embroidery are sedentary work. Claimant is found ineligible at this step because she can still perform past work. In order to perform a thorough evaluation of Claimant's disability assertion the analysis will continue.

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. 201.15

Claimant is 52 years old, has the residual functional capacity to do sedentary work, has more than a high school education and some semi-skilled work history which skills would be transferable. In accordance Social Security Administration Medical-Vocational Guidelines rule 201.15 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 determined that Claimant is not disabled and deny 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: October 6, 2010

Date Mailed: October 7, 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.

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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/vc

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