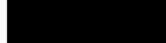


STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

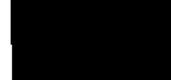


Claimant

Reg. No. 2009-2053

Issue No. 2009; 4031

Case No:



Load No.

Hearing Date:

December 17, 2008

Gogebic County DHS

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 17, 2008. The Claimant appeared at the Department of Human Services (Department) in Gogebic County.

The Claimant submitted recent medical information at the hearing; the medical records were reviewed and the matter is now before the undersigned for final decision.

ISSUES

Whether the Department properly determined the Claimant is "not disabled" for purposes of the Medical Assistance (MA-P) program and State Disability Assistance (SDA) program?

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 an application for MA-P and SDA benefits on April 14, 2008.
- (2) On July 9, 2008 the Department denied the application; and on November 3, 2008 the SHRT denied the application finding medical records supported the capacity to perform a wide range of light work; and the past relevant work as a telemarketer could be performed.
- (3) On September 22, 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 years of age.
- (5) Claimant completed grade 12 and training as a truck driver; and can read and write English and perform basic math.
- (6) Claimant last worked part-time at a nursing home until March 2008; as a truck driver over two years; on a factory line, as a waitress and a housekeeper.
- (7) Claimant has a medical history of left shoulder injury September 2003 with two surgeries; treated with neck nerve blocks; and leaving burning, itching, muscle spasms, right and left arm throbbing, aching and restless; also focus and memory problems.
- (8) April 2008, in part:

CURRENT DIAGNOSIS: Left shoulder pain, depression.

WT 136, BP 114/76. Right hand dominant.

NORMAL EXAMINATION AREAS: HEENT, Respiratory, Cardiovascular, Abdominal.

ABNORMAL FINDINGS: General: pain left shoulder and back 3/5 intensity. Musculoskeletal: left shoulder decreased range of motion, increased with any light touch. Neuro: reflex sympathetic pain left shoulder/arm. Mental: depression. Lab findings/tests: chem. 14 normal. 9/07 EMG bilateral upper extremities normal.

CLINICAL IMPRESSION: Deteriorating.

PHYSICAL LIMITATIONS: Limited, expected to last over 90 days; Lifting/carrying less than 10 pounds 1/3 of 8 hour day; never 10 or over; sit about 6 hours of 8 hour day; no need for walking aid; no use of either hand/arms for simple grasping, reaching, pushing/pulling, fine manipulating; use of right feet/legs for operating controls. Can meet own needs in home. No Mental

limitations. Good bilateral hand grip. Good radial pulses. Paresthesias [Peripheral neuropathy] of bilateral upper extremities. Positive for smoking. Medications: Amitriptyline, Mobic, Topomax, Tylenol ES, Ambien, HCTZ, Lexapro, Calcium with D, Duragesic patch, Robaxin, KCL, Norco (Vicodin and Tylenol) Requip, Prilosec. [REDACTED] DE 1, pp. 14-90.

- (9) June, September and October 2008, in part:

June 2008: Based on history, physical examination and review of medical records, I agree with all treatment to date. Complaint of shoulder pain is consistent with RSD. Based on clinical exam today, I would restrict repetitive use of left upper extremity to no lifting over 5 pounds with left upper extremity. [REDACTED]

[REDACTED] Claimant Exhibit (CE) 1, pp. 164-169

September 2008: As far as the patient's activities are concerned, able to drive a car; and drive here independently for 120 miles. Takes care of ADL independently. Has help with mopping and vacuuming, can do light housework, light dishes, light shopping and pick up gallon of milk. Physical Examination: Musculoskeletal/Neurological: Range of motion of left shoulder is substantially limited in external rotation and abduction and internal rotation. Right abilities are normal. Left hand grip diminished left but normal right. Biceps, triceps, ankle jerk and knee jerk reflexes are equal and 2+ bilaterally. Touch sensation in upper and lower extremities are normal. Bending, twisting motions of neck, thoracic and lumbar spine are normal without pain complaints. [REDACTED]

[REDACTED] CE 1, pp. 162-163

October 2008: Neck: tenderness in posterior neck with movement. Decreased range of motion noted. Extremities: decreased range of motion of left shoulder limited by pain. Some paresthesias upper extremities on left per patient. Lower Extremities: no calf tenderness or ankle edema. [REDACTED] CE 1, p. 175.

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.

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 to not performing SGA since March 2008. 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 (6th Cir 1985).

In this case, the Claimant has presented medical evidence of physical limitations of her left shoulder/arm. See Finding of Facts 8-9. The medical evidence has established that the Claimant has more than minimal limitations, the undersigned finds a physical impairment that has more than a minimal effect on basic work activities; and Claimant’s physical impairments have lasted continuously for twelve months. There was no medical evidence of mental limitations on ability to do 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 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 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.

Appendix I, Listing of Impairments (Listing) 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 Claimant's physical impairments are related to left shoulder impairment and range of motion limitations in the left shoulder and neck. To meet the intent and severity of listing level, the medical records must contain evidence of impairments preventing SGA because of a loss of function.

1.00B. *Loss of Function*.

1. *General*. Under this section, loss of function may be due to bone or joint deformity or destruction from any cause; miscellaneous disorders of the spine with or without radiculopathy or other neurological deficits; . . .

2. *How We Define Loss of Function in These Listings*

a. *General*. Regardless of the cause(s) of a musculoskeletal impairment, functional loss for purposes of these listings is defined as the inability to ambulate effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment, or the inability to perform fine and gross movements effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment. The inability to ambulate effectively or the inability to perform fine and gross movements effectively must have lasted, or be expected to last, for at least 12 months. For the purposes of these criteria, consideration of the ability to perform these

activities must be from a physical standpoint alone. . . . We will determine whether an individual can ambulate effectively or can perform fine and gross movements effectively based on the medical and other evidence in the case record, generally without developing additional evidence about the individual's ability to perform the specific activities listed as examples in 1.00B2b(2) and 1.00B2c.

b. What We Mean by Inability To Ambulate Effectively

(1) *Definition.* Inability to ambulate effectively means an extreme limitation of the ability to walk; *i.e.*, an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. Ineffective ambulation is defined generally as having insufficient lower extremity functioning (see 1.00J) to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities.

(2) *To ambulate effectively*, individuals must be capable of sustaining a reasonable walking pace over a sufficient distance to be able to carry out activities of daily living. They must have the ability to travel without companion assistance to and from a place of employment or school. Therefore, examples of ineffective ambulation include, but are not limited to, the inability to walk without the use of a walker, two crutches or two canes, the inability to walk a block at a reasonable pace on rough or uneven surfaces, the inability to use standard public transportation, the inability to carry out routine ambulatory activities, such as shopping and banking, and the inability to climb a few steps at a reasonable pace with the use of a single hand rail. The ability to walk independently about one's home without the use of assistive devices does not, in and of itself, constitute effective ambulation.

c. What we mean by inability to perform fine and gross movements effectively. Inability to perform fine and gross movements effectively means an extreme loss of function of both upper extremities; *i.e.*, an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. To use their upper extremities effectively, individuals must be capable of sustaining such functions as reaching, pushing, pulling, grasping, and fingering to be able to carry out activities of daily living. Therefore, examples of inability to perform fine and gross movements effectively include, but are not limited to, the inability to prepare a simple meal and feed oneself, the inability to take care of personal hygiene, the inability

to sort and handle papers or files, and the inability to place files in a file cabinet at or above waist level.

In this case, the Claimant's medical records do not establish that the Claimant has an inability to ambulate or a loss of function of her lower extremities; and the medical records only support a diminished function of the left shoulder/arm. See Finding of Facts 8-9.

This Administrative Law Judge, based on the medical records, finds the Claimant is not presently disabled at the third step for purposes of the Medical Assistance (MA) program. 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 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.

Here, the medical findings were essentially normal for all body systems except limitations of range of motion of the left shoulder and arm; and Claimant's complaints of pain. [REDACTED] opined that the Claimant had paresthesias. But other medical evaluators did not opine this diagnosis but did find symptoms consistent with RSD. See Finding of Facts 8-9.

The Claimant is right hand dominant with diminished left shoulder/hand function. Claimant has had a number of work experiences involving lifting/carrying. Given [REDACTED] and [REDACTED] lifting limit, 5 pounds left arm/hand, the undersigned finds the Claimant cannot return to past work requiring two hand lifting. Analysis under step five is necessary.

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 functional capacity," defined simply as "what can you still do despite you 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 limitations.

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 physical findings, and hearing record that Claimant's RFC for work activities on a regular and continuing basis is functionally limited to sedentary work because the Claimant does not have medically documented right arm/hand limits except [REDACTED], not confirmed by other evaluators.

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 is considered a *younger individual*; a category of individuals age 18 to 49. Under Appendix 2 to Subpart P: Table No. 1—Residual Functional Capacity: Maximum Sustained Work Capability Limited to Sedentary Work as a Result of Severe Medically Determinable Impairment(s), Rule 201.28, for younger individual, age 18 to 49; education: high school graduate or more; previous work experience, skilled or semi-skilled—skills not transferable; the Claimant is "not disabled" per Rule 201.28.

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 evidence to support a finding that Claimant’s impairment has disabled her under SSI disability standards. 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: February 18, 2009

Date Mailed: February 20, 2009

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

cc:

