

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.: 2009-2067
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
March 12, 2009
Oakland County DHS (3)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a hearing was held in Walled Lake, Michigan on March 12, 2009. The Claimant appeared and testified, along with

[REDACTED]. The Claimant was represented by [REDACTED]

[REDACTED]. [REDACTED] appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of the Medical Assistance (MA-P) benefit 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. The Claimant submitted a public assistance application seeking MA-P with retroactive benefits for March 2008 on April 3, 2008.

2. On June 30, 2008, the Medical Review Team ("MRT") denied disability finding the Claimant capable of performing other work for MA-P purposes. (Exhibit 1, pp. 3, 4)
3. On July 9, 2008, the Department sent the Claimant an eligibility notice informing she was found not disabled. (Exhibit 1, pp. 1, 2)
4. On August 12, 2008, the Department received the Claimant's written request for hearing protesting the disability determination.
5. On October 27, 2008, the State Hearing Review Team found the Claimant not disabled. (Exhibit 2, pp. 1, 2)
6. The Claimant's alleged physical disabling impairments are due to skin cancer, Crohn's Disease, hypertension, and chronic pain.
7. The Claimant's alleged mental disabling impairments are due to depression and anxiety.
8. At the time of hearing, the Claimant was 45 years old with a [REDACTED]; was 5'4 1/2" and weighed 110 pounds.
9. The Claimant graduated from high school, with some college, and has a work history in home health care and business owner.
10. The Claimant's impairment has lasted, or is expected to last, continuously for a period of at least 12 months.

CONCLUSIONS OF LAW

The Medical Assistance ("MA") program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services ("DHS"), formally known as the Family Independence Agency, 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').

Disability is defined 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 not less than 12 months. 20 CFR 416.905(a) The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913 An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a) Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.929(a)

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c) (3) The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c) (2)

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a) (1) The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a) (4); 20 CFR 416.945

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4) If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4) If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945 Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a) (1) An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4) In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b) (1) (iv)

In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a) An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a) The individual has the responsibility to provide evidence of prior work experience; efforts to work;

and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6)

As previously stated, the first step looks at the individual's current work activity. An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a) (4) (i) In the record presented, the Claimant is not involved in substantial gainful activity and last worked in approximately 2007. The Claimant is not disqualified from receipt of disability benefits under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b) An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c) Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b) 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.

Id. The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985) An impairment qualifies as severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985)

In the present case, the Claimant alleges physical disability due to skin cancer, Crohn's disease, hypertension and chronic pain. Additionally, the Claimant asserts mental impairments due to depression and anxiety.

[REDACTED], the Claimant tested positive for basal cell carcinoma.

[REDACTED], the Claimant presented to [REDACTED] with multiple skin lesions. The physical examination revealed numerous lesions scattered in the torso and lower extremities with a dominant lesion on the right shoulder. Previous biopsies confirmed basal cell carcinoma. Removal of the lesions was found difficult due to the number. Excision of the dominant lesion was recommended with spot radiotherapy to the remaining.

On [REDACTED], the Claimant presented to [REDACTED]

[REDACTED] The physical examination revealed multiple skin lesions involving the Claimant's face, neck, bilateral arms, and bilateral lower extremities. The biopsy site from her left shoulder was scabbed and healing. The Claimant's right shoulder revealed a dominant lesion. Ultimately, due to the multiple atypical lesions, and concern for cancer, the Claimant was referred to [REDACTED].

For the period from October 2007 through November 2008, the Claimant's multiple, recurrent lesions were examined [REDACTED] on a monthly basis. The records document numerous lesions, deep cell carcinoma along Bowen's disease, invasive squamous cell carcinoma. Biopsies, excisions, re-excisions, radiotherapy, creams, and pain medication were prescribed and/or recommended with notes regarding the Claimant's lack of insurance.

[REDACTED] recommended spot surgical resection of the dominant lesions and then radiation therapy. The Claimant's was placed on Lortab and Xanax in the interim.

On [REDACTED], the Claimant presented to [REDACTED] with complaints of severe abdominal pain, nausea, vomiting, and diarrhea. The admitting and discharge diagnosis was an exacerbation of Crohn's disease. The Claimant was discharged on [REDACTED]

On [REDACTED], the Claimant was admitted to [REDACTED] after being found by her family with blood in her nose, mouth, and with a decreased level of responsiveness. An acetaminophen overdose with a change in mental status was the admitting diagnoses. A colonoscopy was performed which found no active disease. The Claimant was discharged on [REDACTED] with the diagnoses of Crohn's disease, pancytopenia, Tylenol overdose, hypertension, and skin cancer.

On [REDACTED] the Claimant was admitted to [REDACTED] for psychiatric treatment after being found driving erratically allegedly under the influence of alcohol/medication, by the police department. Upon admission, the Claimant was found in a depressive type psychosis with a Global Functioning Assessment ('GAF') of 30. The Claimant

was discharged on [REDACTED] with a diagnosis of major, recurrent depression, with severe alcohol abuse. The GAF was 60.

On [REDACTED], the Claimant was examined by [REDACTED]. The Claimant was found to have Crohn's Disease with several resections of the bowel; hypertension; minimal hearing impairment; pain in the knee joints, with no abnormal physical findings; skin lesions all over the body; and depression.

On [REDACTED], biopsies from the Claimant's left chest, mid chest, and right chest were sent [REDACTED] for examination. The Dermatopathology Report found at least squamous cell carcinoma in situ (Bower's disease) with invasion not ruled out and re-excision recommended.

A Pathology Report from [REDACTED] discussed the results from biopsied skin from 8 areas. The Claimant skin cancer was detailed with an aggressive growth pattern on the right shoulder noted. Re-excision of the entire area was recommended.

On [REDACTED] was submitted on her behalf. The Claimant's current diagnoses were listed as Bower's disease, invasive squamous cell skin cancer, and Crohn's Disease. The Claimant's condition was noted as deteriorating with significant pain being noted. The Claimant was limited to lifting/carrying 10 pounds; sitting and/or walking less than 2 hours for an 8-hour work day; and sitting less than six hours.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented objective medical evidence establishing that she does have some physical and mental limitations on her ability to perform basic work activities. Accordingly, the Claimant

has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted, or are expected to last, continuously for a twelve month period, therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Claimant has alleged disabling physical impairments due to chronic pain, Crohn's disease, skin cancer, hypertension, and depression. Appendix I, Listing of Impairments, discusses the analysis and criteria necessary to support a finding of a listed impairment. Listing 1.00 defines musculoskeletal system impairments. Disorders of the musculoskeletal system may result from hereditary, congenital, or acquired pathologic processes. 1.00A Impairments may result from infectious, inflammatory, or degenerative processes, traumatic or developmental events, or neoplastic, vascular, or toxic/metabolic diseases. 1.00A 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. 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. 1.00B2b (1) Ineffective ambulation is defined generally as having insufficient lower extremity function to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities. (Listing 1.05C is an exception to this general

definition because the individual has the use of only one upper extremity due to amputation of a hand.) Id. 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. 1.00B2b (2) They must have the ability to travel without companion assistance to and from a place of employment or school. . . . Id. When an individual's impairment involves a lower extremity uses a hand-held assistive device, such as a cane, crutch or walker, the medical basis for use of the device should be documented. 1.00J4 The requirement to use a hand-held assistive device may also impact an individual's functional capacity by virtue of the fact that one or both upper extremities are not available for such activities as lifting, carrying, pushing, and pulling. Id.

Categories of Musculoskeletal include:

- 1.02 Major dysfunction of a joint(s) due to any cause: Characterized by gross anatomical deformity (e.g. subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:
- A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively as defined in 1.00B2b; or
 - B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, wrist, hand), resulting in inability to perform fine and gross movements effectively as defined in 1.00B2c

The inability to perform fine and gross movements effectively means that the impairment(s) interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. 1.00B2c To use upper extremities effectively, an individual must be capable of sustaining functions such as reaching, pushing, pulling, grasping, and fingering to be able to carry out activities of daily living. Id.

In the record presented, the Claimant's medical documentation refers to knee pain however; there was insufficient objective medical evidence to meet the severity requirement found within Listing 1.00. The Claimant cannot be found disabled (or not disabled) under this Listing.

The Claimant asserts physical disabling impairments due to hypertension. Listing 4.00 defines cardiovascular impairment. An uncontrolled impairment means one that does not adequately respond to the standard prescribed medical treatment. 4.00A3f In a situation where an individual has not received ongoing treatment or have an ongoing relationship with the medical community despite the existence of a severe impairment, the disability evaluation is based on the current objective medical evidence. 4.00B3a If an individual does not receive treatment, an impairment that meets the criteria of a listing cannot be established. *Id.* Hypertension (high blood pressure) generally causes disability through its effect on other body systems and is evaluated by reference to specific body system(s) affected (heart, brain, kidneys, or eyes). 4.00H1 Hypertension, to include malignant hypertension, is not a listed impairment under 4.00 thus the effect on the Claimant's other body systems were evaluated by reference to specific body parts.

In the record presented, the Claimant was diagnosed with hypertension however the record is devoid of any evidence of any end organ damage (heart, kidney, brain, eyes) as a result of the hypertension. Ultimately, based upon the hearing record, it is found that the Claimant's medical record does not support a finding that the Claimant's physical impairment of hypertension is a 'listed impairments' or equivalent to a listed impairment within 4.00.

The Claimant asserts a physical disabling impairment due to Crohn's Disease. Listing 5.00 defines digestive system impairments. Disorders of the digestive system include

gastrointestinal hemorrhage, hepatic (liver) dysfunction, inflammatory bowel disease, short bowel syndrome, and malnutrition. 5.00A They may also lead to complications, such as obstruction, or be accompanied by manifestations in other body systems. 5.00A Symptoms and signs of IBD include diarrhea, fecal incontinence, rectal bleeding, abdominal pain, fatigue, fever, nausea, vomiting, arthralgia, abdominal tenderness, palpable abdominal mass (usually inflamed loops of bowel) and perineal disease. 5.00E2 Surgical diversion of the intestinal tract, does not preclude any gainful activity if an individual is able to maintain adequate nutrition and function of the stoma. 5.00E4

In the record presented, the Claimant was diagnosed with Crohn's disease several years ago [REDACTED] the Claimant was admitted to the hospital due to an exacerbation of her Crohn's disease. The Claimant was released in stable condition. Ultimately, there were insufficient medical records presented to support a finding of disabled within Listing 5.00. Accordingly, the Claimant cannot be found disabled under this Listing.

The Claimant also asserts physical disabling impairments due to skin cancer. The majority of the Claimant's medical records document several treatments and/or recommendations regarding the Claimant's multiple lesions. Listing 8.00 defines skin disorders while Listing 13.00 discusses Adult Malignant Neoplastic Diseases. In evaluating the severity of a skin disorder within Listing 8.00, the onset, duration, frequency of flare-ups, and prognosis of the skin disorder is needed as well as the location, size, and appearance of any lesions. 8.00B Extensive skin lesion involves multiple body sites or critical body areas involving two extremities that may interfere with an individual's range of motion. 8.00C1a Symptoms, including pain, are also considered. 8.00C3 Skin lesions that do not meet the requirements of a Listing within 8.00 may

be found to be the medical equivalent of a Listing when the severity, frequency, and resolution are considered.

In the record presented, the Claimant's objective medical records document continual, multiple, invasive skin lesion that persist despite considerable treatment. After a review of the entire record, it is found that the Claimant's skin lesions are the medical equivalent of a Listed impairment within Listing 8.00. Accordingly, the Claimant is found disabled at Step 3 therefore subsequent steps in the sequential evaluation process are not necessary.

The State Disability Assistance ("SDA") program, which provides financial assistance for disabled persons, was established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code ("MAC R") 400.3151 – 400.3180. Department policies are found in PAM, PEM, and PRM. A person is considered disabled for SDA purposes 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.

In this case, because the Claimant was found disabled for the purposes of the MA program, the Claimant is disabled for purposes of the SDA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the findings of fact and conclusions of law, finds the Claimant disabled for purposes of the Medical Assistance program and the State Disability Assistance program.

It is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate review of the April 3, 2008 application to determine if all other non-medical criteria are met and inform the Claimant and her authorized representative of the determination.
3. The Department shall supplement the Claimant any lost benefits she was entitled to receive if otherwise eligible and qualified in accordance with department policy.
4. The Department shall review the Claimant's continued eligibility in accordance department policy in April of 2010.

/s/

Colleen M. Mamelka
Administrative Law Judge
For Ishmael Ahmed, Director
Department of Human Services

Date Signed: 03/19/09

Date Mailed: 03/20/09

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 the Circuit 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.

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