

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: 2009-21323

Issue No: 2009, 4031

Case No: ██████████

Load No: ██████████

Hearing Date:

July 8, 2009

Oakland County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted by Administrative Law Judge Jeanne M. VanderHeide on July 8, 2009 pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department on March 24, 2009. At the hearing, the Claimant was present and testified along with her friend ██████████. Sallie Kuhne, ES Worker and Leanne Foote, FIM appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA") and State Disability Assistance ("SDA") 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 SDA and MA on 1/2/09.
2. Claimant filed a previous MA/SDA application on July 24, 2008.
3. Claimant filed a hearing request on the previous application and the case was heard on May 14, 2009 by Judge Linda Steadley Schwarb.

4. Judge Schwarb issued an opinion on September 8, 2009 ordering that the Claimant met the definition of medically disabled under the MA and SDA programs as of July, 2008.
5. Claimant is 5'2" tall and weighs 133 pounds.
6. Claimant is right handed.
7. Claimant is 53 years of age.
8. Claimant's impairments have been medically diagnosed as right shoulder injury with pain and numbness down to fingers of right arm; lower back pain due to deteriorated disk L3-L4, osteoporosis and bipolar disorder.
9. Claimant's physical symptoms are low back pain, right shoulder pain and numbness. Constant pain 8/10.
10. Claimant's mental symptoms are depression, poor sleep, poor appetite, nightmares, crying spells, hopelessness, difficulty staying focused, mood swings, irritability, impulsivity, anxiety, panic attacks, compulsiveness, loss of memory, poor comprehension, confusion, sleep disturbances and fatigue
11. Claimant was been hospitalized at [REDACTED] in [REDACTED] where a laminectomy was performed in 2000. In 2005, Claimant underwent gastric bypass surgery to allow her to lose weight and benefit her back. This was done at [REDACTED].
12. Claimant takes the following prescriptions (side effects):
 - a) Seroquel - sleep
 - b) Lexapro – anti depressant
 - c) Neurotin – help with pain
 - d) Calcium
 - e) Ibuprofen 800 mg 3x/day
13. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
14. Claimant has a 12th grade education and a degree from cosmetology school.
15. Claimant is able to read, write, and perform basic math skills (add and subtract, can multiply and divide somewhat).
16. Claimant last worked in 2007 as a home health care aide. Claimant testified that she was unable to perform the job duties of a home health care aide any longer due to the impairments in the shoulder and low back.
17. Claimant also has prior employment experience as school bus driver. Claimant had to stop working at this job after back surgeries b/c lots of bending was

required to change oil and clean the bus. Claimant last worked as a cosmetologist 18 years ago.

18. Claimant testified to the following physical limitations:
 - Sitting: 45 min.
 - Standing: ½ hour
 - Walking: ½ mile
 - Bend/stoop: Claimant cannot bend very well due to back pain.
 - Lifting: 10 lbs.
 - Grip/grasp: Cannot lift above shoulder. Most of the time not a problem. If hand goes numb, then claimant will drop things. Happens off and on throughout day.
19. Claimant performs household chores such as dishes, makes the bed, 1x/week dusts with left hand, meal prep is a sandwich or frozen meal. Claimant gets a ride to the store and help carrying bags up to second floor. Claimant has help from a friend taking trash out.
20. The Department found that Claimant was not disabled and denied Claimant's application on February 27, 2009.
21. Medical records examined are as follows:

██████████ Medical Needs PCP

DX: Right shoulder pain, Depression, panic attacks, herniated lumbar disc, s/p laminectomy, diverticulitis, fibromyalgia, I.B. syndrome, Bipolar,

- needs assistance with meal preparation, shopping/errands, laundry and housework

PHYSICAL LIMITATIONS:

Lifting: 25 lbs occasionally
Standing: 2-4 hours/day
Walking: 1-2 hours/day
Sitting: 4 hours/day

MEDICATIONS:

Seroquell 100 mg at bedtime
Celexa
Lyrica – fibromyalgia
Claritin

██████████ Psychiatric Eval. Report (Exhibit 1, pp. 16 – 19)

From time to time has experienced periods of depression, poor sleep, poor appetite, nightmares, crying spells, hopelessness, difficulty staying focused, sometimes mood swings, irritability, impulsivity, anxiety, panic attacks and compulsiveness. She underwent two back surgeries for which she was treated for her

pain with Vicodin and Xanax, however, she started abusing these medications.

IMPRESSIONS: Major depression, bipolar affective disorder, drug abuse, alcohol abuse.

██████████ Mental Residual Functional Capacity Assessment (Exhibit 2)

Markedly limited in the following:

1. The ability to understand and remember detailed instructions.
2. The ability to carry out detailed instructions.
3. The ability to maintain attention and concentration for extended periods.
4. The ability to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances.
5. The ability to work in coordination with or proximity to others without being distracted by them.
6. The ability to complete a normal workday and worksheet without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods.
7. The ability to accept instructions and respond appropriately to criticism from supervisors.
8. The ability to travel in unfamiliar places or use public transportation.
9. The ability to set realistic goals or make plans independently of others.

“██████████ has both severe anxiety and depression. Due to her symptoms, I do not believe she is able to maintain consistent employment”

██████████, Internal Medicine IME (Exhibit 3)

Hx of Impairments: Panic disorder, chronic low back pain, rotator cuff tear.

PHYSICAL LIMITATIONS: Stand/walk less than 2 hrs in 8 hr work day, sit less than 6 hours in 8 hour work day

MENTAL LIMITATIONS: Memory, social interaction.

██████████, Internal Medicine IME (Exhibit 4)

Lumbar disc pain due to disc bulge, fibromyalgia.

PHYSICAL EXAM: Decreased range of motion, right shoulder impingement sign.

PHYSICAL RESTRICTIONS: lifting less than 10 lbs occasionally, stand/walk less than 2 hrs in 8 hour work day. Decreased Range of Motion of Right shoulder.

██████ and ██████ MRI Lumbar Spine (Exhibit 5)

Evidence of disc desiccation at L5-S1 with moderate to severe loss of disc height.

██████ Right Shoulder MRI (Exhibit 6)

Partial thickness rim-vent tear of the supraspinatus tendon is seen at the insertion onto the humeral head. AC joint separation with supraspinatus muscle entrapment. Partial tears of the coracoacromial and coracoclavicular ligaments.

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.

In the subject case, Claimant filed two distinctly different applications for MA and SDA, one on July 24, 2008 and the other on January 2, 2009. Claimant then had two separate hearings regarding MA and SDA benefits on each of the applications. Judge Schwarb has already ruled on the issue of Claimant's disability on September 9, 2009 as follows:

After careful review of the Claimant's extensive medical record and the Administrative Law Judge's personal interaction with the Claimant at the hearing, the this Administrative Law Judge finds that Claimant's exertional and non-exertional impairments render claimant unable to engage in a full range of even sedentary work activities on a regular and continuing basis. 20 CFR 404, Subpart P, Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v. heckler*, 743 F.2d 216 (1986). The Department has failed to provide vocational evidence which establishes that Claimant has the residual function capacity for substantial gainful activity and that, given Claimant's age, education and work experience, there are significant numbers of jobs in the national economy which the Claimant could perform despite Claimant's limitations. Accordingly, this Administrative Law Judge concludes that claimant is disabled for the purposes of the MA program."

Since Judge Schwarb's opinion incorporates the same time period as Claimant's current application/hearing, the issue of disability has already been ruled upon. Accordingly, Claimant is disabled for the purposes of the MA program pursuant to Judge Schwarb's 9/8/09 Opinion.

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.

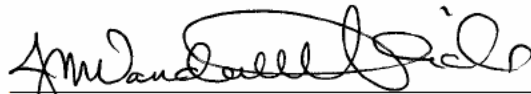
In this case, there is sufficient evidence to support a finding that Claimant's impairment has disabled her under SSI disability standards. This Administrative Law Judge finds the Claimant is "disabled" for purposes of the MA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant is medically disabled under the MA program as of January 2, 2009.

Therefore the department is ordered to initiate a review of the application of January 2, 2009, if not done previously, to determine claimant's non-medical eligibility. The department shall inform the claimant of the determination in writing.

Furthermore, Claimant's MA cases shall be consolidated including the present case along with 2009-13539, Case # [REDACTED]. The MA case shall be reviewed in November, 2010.



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

Date Signed: 10/26/09

Date Mailed: 10/28/09

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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