

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: 2009-22750

Issue No: 4031, 2009

Case No:

██████████

Load No:

Hearing Date:

July 15, 2009

Oakland County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

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 filed on April 18, 2009. After due notice, a telephone hearing was held on July 15, 2009. The Claimant was present and testified. ██████████ also testified on behalf of Claimant. Linda Riffenburg, 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") 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 January 8, 2009.
2. Claimant is 5'2" tall and weighs 114 pounds.
3. Claimant is right handed.

4. Claimant is 46 years of age.
5. Claimant's impairments have been medically diagnosed as bulging discs in neck, low back problems, radiculopathy, panic and anxiety disorder, bipolar disease, high blood pressure.
6. Claimant's physical symptoms are neck pain with radiation down entire spine, arms and legs, difficulty sleeping at night, numbness and tingling in toes and fingers, tingling on left side of head, difficulty standing for any period of time, and breathing problems.
7. Claimant's mental symptoms are long term memory problems, difficulty concentrating, panic attacks (whole body tenses up, heart starts racing, feels like she can't breath), daily anxiety attacks, Crying spells – 2-4x/week, confusion, nervousness, sleep disturbances, fatigue, and guilt feelings.
8. Claimant takes the following prescription medications:
  - a) Vicodin ES 1x/day
  - b) Valium 10 mg 1x/day (as needed for anxiety/panic attack)
  - c) Diazide – blood pressure med
  - d) Lisinopiral – blood pressure
  - e) Bipolar meds – [REDACTED]
  - f) Neurontin 600 mg – nerve pain in neck
  - g) Risperdol – bipolar
  - h) Cipro
  - i) Dilaudid 4 mg/day
9. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
10. Claimant has a 9<sup>th</sup> grade education. No GED.
11. Claimant is able to read/write perform basic math skills – not good at math at all (takes her a minute to add/subtract, worse on multiply and divide). “I don't have no money to count”.
12. Claimant last worked 2004. Claimant waitressed for a big part of her life. This involved lifting up to 20-30 lbs, bending/stooping and standing on her feet all day. Claimant also previously managed a gas station and worked at fast food restaurants. At the gas station, Claimant had to stock items up to 50 lbs lifting, bending/stooping and on feet most of the day.
13. Claimant testified that she has physical limitations as follows:
  - Sitting: Better on neck when leaned up against chair or couch. 1 hour
  - Stand: 5-10 min.

- Walk: CI does not grocery shop any more b/c she can't walk through whole store.
- Bend/stoop – CI tries to avoid
- Lift: avoids lifting a gallon of milk. CI can pick up a plate
- Grip/grasp – Yes b/c of tingling in hands. CI will drop things.

14. Claimant testified that she does not do any household chores.

15. Medical records examined are as follows:

██████████ MRI of C-spine, Thoracic Spine and L-Spine

C-Spine Impression: Postsurgical changes with fusion at the level of C5, C6 and C7. Mild bulging disc at C4-5 without cord compression

Thoracic Spine Impression: Mild scoliosis of the spine.

L-Spine Impression: Mild scoliosis of the spine, mild interfacet degenerative changes at L5-S1

██████████ Family Physician Medical Exam Report (Exhibit 1, pp. 12-13)

CURRENT DIAGNOSES: Severe neck pain with radiculopathy, severe CBP with radiculopathy, severe anxiety/depression, bipolar disorder, fatigue

PHYS LIMITATIONS:

- Lifting – less than 10 lbs occasionally
- Stand/walk less than 2 hrs/day
- Sitting less than 6 hrs/day

ASSISTIVE DEVICES: Cane, bilateral wrist brace

MENTAL LIMITATIONS: Limited in comprehension, sustained concentration, memory and social interaction.

CI needs assistance with household chores such as laundry, house keeping and shopping and meal prep.

██████████ Psychiatric Examination (Exhibit 1, 3-6)

HISTORY: Patient treated with ██████████ Clinic for 3 months in 2006. Patient worked as a waitress all her life until neck surgery. Patient claims she stopped drinking in 1988. Patient has been homeless for last 2 years.

SYMPTOMS: Panic attacks for last two years, racing thoughts, not thinking clearly and mind foggy, anxious, depressed, cried a lot

EMOTIONAL REACTION: Her affect was anxious and depressed

CALCULATION: Could not do serial 7's from 100.

DIAGNOSES: DYSTHYMIC DISORDER

GAF: 50-55

**Medical Examination (Exhibit 1, pp. 7-11)**

HX OF PRESENT ILLNESS: Neck injury with cervical fusion in 2004. CI Reinjured her neck and in constant pain since with radiation into the back of her head and both arms and numbness in both hands. Also, CI has low back pain that radiates into the legs, worse with bending over. Limited to lifting 5 lbs. Carpal tunnel syndrome on left side.

MEDICATIONS: Valium, Vicodin

PHYSICAL EXAMINATION: CI was not able to bend over. She was not able to squat or kneel down and she was not able to walk on her heels or on her toes. It was very painful for her to lay flat on her back.

NECK: There is remarkable tenderness in the cervical spine area and remarkable decreased range of motion in all directions.

BACK: Back with lumber spine tenderness. Straight leg raising plus 20 degrees over the right, plus 30 degrees over the left.


EXTREMITIES: Carpal tunnel sign positive over the right side.

NEUROLOGIC: Decreased right hand grip 3 over 5 and also decreased left hand grip 4 over 5.

IMPRESSION:

1. Neck pain may be due to herniated disc, may be due to degenerative disc disease
2. Back pain may be due to degenerative disc disease and possible herniated disc.
3. Carpal tunnel syndrome over the right side.
4. Anxiety and panic attacks.

CONCLUSION: The patient appeared that she is suffering from remarkable back pain and neck pain that could be due to a disc. Also she is suffering from carpal tunnel syndrome over the right side. The patient's activity is almost none at all due to the severity of the pain, limitation of movement and inability to use her right hand.

 X-ray Cervical Spine (Exhibit 1, p. 15)  
Post surgical change at C5-C7  
Scattered degenerative Facet Disease

#### 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 CFR 416.905.

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 2004. 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 (6<sup>th</sup> 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 (6<sup>th</sup> Cir. 1988); *Farris v Sec’y of Health & Human Servs*, 773 F.2d 85, 90 (6<sup>th</sup> Cir. 1985).

In this case, the Claimant has presented medical evidence showing a diagnosis of 2004 neck injury with cervical fusion, neck and back pain with possible disc herniations and radiculopathy, severe anxiety/depression and panic disorder. Claimant testified to physical limitations in terms of sitting, standing, walking and lifting. Claimant’s physicians as well as the independent medical examiners have supported Claimant’s subjective complaints of back and neck pain. In fact, the physician who performed the [REDACTED] IME indicated that Claimant showed remarkable tenderness and remarkable decreased range of motion in her cervical spine. Claimant also tested positive for straight leg raise on both sides. The IME opined that “the patient’s activity is almost none at all due to the severity of pain, limitation of movement and inability to use her right hand.”

The medical evidence has established that Claimant has physical and mental impairments that have more than a minimal effect on basic work activities; and 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 1.04 *Disorders of the Spine* was reviewed. 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. Claimant's MRI does not show any type of herniation or cord compression as required by the listing. 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 one can do in a work setting. RFC is the most one can still do despite limitations. All the relevant medical and other evidence in the case record applies in the assessment.



Claimant has presented medical evidence supporting degenerative disc disease, left lateral focal disk protrusion and foraminal stenosis. Claimant's prior employment included waitressing (light exertional activity and semi-skilled) and managing a gas station (medium exertional activity and semi-skilled). Claimant has been placed on lift/stand/walk physical limitations by two her treating physician of lifting less than 10 lbs occasionally, stand/walk less than two hours per day and sitting less than two hours per day. Therefore, the undersigned finds the Claimant currently limited to sedentary work. Accordingly, Claimant is unable to return to past relevant work in any of the above listing prior occupations. Evaluation under step five will be made according to the law.

#### **5. Ability to Perform Other Work**

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 function capacity," defined simply as "what you can still do despite your 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 impairments.

20 CFR 416.960. *Felton v. DSS*, 161 Mich. App. 690, 696-697, 411 N.W.2d 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 at the level of sedentary work. Sedentary work is described as follows:

*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.

20 CFR 416.967(a). Claimant's most recent doctor recommended physical limitation dictates that Claimant is limited to lifting less than 10 lbs throughout the day and standing/walking less than two (2) hours per eight hour day. Therefore, Claimant would be limited to sedentary work.

20 CFR 416.967.

Claimant at forty-six 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. 20 CFR 404, Appendix 2 to Subpart P, Rule 201.20. Claimant's education is "limited or less – at least literate and able to communicate in English" and his previous work experience is unskilled. While generally, such an individual would be able to make a transition into sedentary work, there are exceptions:

Inability to engage in substantial gainful activity would be indicated where an individual who is restricted to sedentary work because of a severe medically determinable impairment lacks special skills or experience relevant to sedentary work, lacks educational qualifications relevant to most sedentary work (e.g., has a limited education or less) and the individual's age, though not necessarily advanced, is a factor which significantly limits vocational adaptability.

20 CFR 404, Appendix 2 to Subpart P, Rule 201.00(c). In the present case, Claimant has mental impairments in addition to her physical limitations. Claimant experiences panic attacks a couple times a week, poor concentration, confusion and crying spells several times a week. Furthermore, Claimant has only a 9<sup>th</sup> grade education. The Administrative Judge finds that the Claimant's mental and physical impairments and limitations have a major effect upon Claimant's ability to perform basic work activities. Claimant is unable to perform the full range of activities for even sedentary work as defined in 20 CFR 416.967(a) because of the nature of the

limitations. The total impact caused by the combination of medical problems must be considered. The combination of Claimant's impairments results in severe impairment which limits Claimant's ability to work. 20 CFR 404.1529. Therefore, it is the finding of the undersigned, based upon the medical data and hearing record that Claimant is "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.

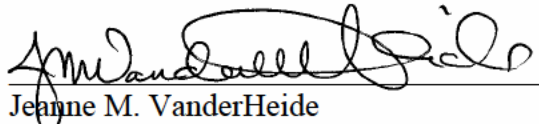
In this case, there is sufficient evidence to support a finding that Claimant's impairment is disabling her under SSI disability standards. This Administrative Law Judge finds the Claimant is "disabled" for purposes of the MA program.

#### DECISION AND ORDER

The Administrative Law Judge, based on the findings of fact and conclusions of law, decides that the Claimant is "disabled" for purposes of the Medical Assistance program and the State Disability Program.

It is ORDERED; the Department's determination in this matter is REVERSED.

Accordingly, The Department is ORDERED to initiate a review of the 1/8/09 application to determine if all other non-medical eligibility criteria are met. The Department shall inform Claimant of its determination in writing. Assuming Claimant is otherwise eligible for program benefits, the Department shall review Claimant's continued eligibility for program benefits in November, 2010.

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

Date Signed: 11/12/09

Date Mailed: 11/17/09

**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:

