

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: 2009-23547

Issue No: 2009, 4031

Case No:

Load No:

Hearing Date:

September 23, 2009

Wayne 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 the Claimant's request for a hearing. After due notice, a telephone hearing was conducted on September 23, 2009. The Claimant appeared and testified. Cheryl Howell, Assistant Payment Supervisor, 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 applied for SDA and MA as of 12/8/08.
2. Claimant is 5'4" tall and weighs 250 pounds.
3. Claimant is right handed.

4. Claimant is 49 years of age.
5. Claimant's impairments have been medically diagnosed as diabetes, hypertension and depression.
6. Claimant's physical symptoms are shakiness if Claimant's sugar is too high and headaches.
7. Claimant's mental symptoms are slight panic attacks, crying spells – 4x/year, and low self esteem due to lack of employment.
8. Client testified to the following hospitalizations:
 - a. [REDACTED] - [REDACTED] – CT scan of abdomen (b/c retention of fluid)
 - b. [REDACTED] – [REDACTED] – Ultrasound of heart (gained 50 lbs of fluid in 6 weeks). Claimant testified that nothing was wrong with her heart.
 - c. [REDACTED] – [REDACTED] – electrolytes out of sync, Claimant was transferred to the [REDACTED].
9. Claimant takes the following prescriptions:
 - a) Humalog Insulin
 - b) Lantus Insulin
 - c) Furosemide (Lasix – water pill)
 - d) Lisinopro – blood pressure meds
 - e) Wellbutrin
 - f) Potassium over the counter to counter effects from water pill
 - g) Baby aspirin
 - h) Cinnamon tablets to help control blood sugar levels
 - i) Chromium
10. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
11. Claimant has a 12th grade education. Claimant also attended that [REDACTED] and received a certified diploma in computerized accounting.
12. Claimant last worked in August of 2007 for [REDACTED] as a cashier. Claimant had to verify that invoices were paid, balance out \$ and make bank deposit. Claimant sat for this job, and there was no lifting, no bending or stooping required. Claimant held this position for two years and was fired due to noncompliance with company policy.

13. Claimant has prior employment experience as part of [REDACTED] grocery training (Claimant was part of management for a while) where she worked for 18 years. In this job, Claimant was on her feet 8 hours/day, bending, stooping, and lifting up to 50 lbs. From 1979-2001 Claimant was a cashier at [REDACTED] where she was on the sales floor on her feet and in the cash office doing bank deposits.
14. Claimant testified that she has no physical limitations with regards to sitting, standing, walking, bending/stooping, gripping/grasping or lifting up to 50 lbs.
15. Claimant performs household chores such as laundry, gardening, lawn care, washing dishes, shoveling snow, dusting, household cleaning & repairs, cooking and food shopping.
16. Medical records were reviewed, in part, as follows:

[REDACTED] Psychiatric IME (Exhibit A)

The patient is in touch with reality and was not responding to internal stimuli. Her self-esteem is average. Her psychomotor activity is normal. She is motivated and has good insight into her illness. She did not exaggerate or minimize symptoms. The patient's mood is depressed. The patient has a history of depressive episodes for the last ten years, but the depression [is] responsive to antidepressant treatment, and with this treatment, she has no problems working or getting along with coworkers. GAF 50. The prognosis is guarded.

[REDACTED] – Internal Medicine IME (Exhibit B)

HISTORY: Diabetes for the last 8 years – controlled. Hypertension since 1998 but no TIA. She was having recurrent headaches and a CAT scan was done in 2002 and she was told she had a mini stroke but she did not have any symptoms as far as weakness of the extremities or slurred speech.

MEDICAL SOURCE STATEMENT: Physically her examination is unremarkable. I think her primary problem is her psychiatric condition.

[REDACTED] Internal Medicine DHS 49

DX: Lymphodema, Bipolar disorder, obesity, depression

PHYSICAL LIMITATIONS: Lifting less than 10 lbs occasionally, stand/walk less than 2 hrs in 8 hr day, sit less than 6 hrs in 8 hour day.,

MENTAL LIMITATIONS: Limited in sustained concentration

██████████ Mental Residual Functional Capacity Assessment
Markedly Limited in on the category of the ability to carry out detailed instructions.

HISTORY: Depression, anxiety, fatigue, crying spells, hopeless at times.

DAILY FUNCTIONING: Can take care of basic needs. Has difficulty holding a job on sustained basis.

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.

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, client last worked in 2007. Therefore, Claimant is not disqualified at the first step.

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 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 F.2d 860, 862 (6th Cir. 1988); *Farris v Sec’y of Health & Human Servs*, 773 F.2d 85, 90 (6th Cir. 1985).

In this case, the Claimant has presented medical evidence of diabetes, and depression. As a result, Claimant has been placed on physical restrictions. The medical evidence has established that Claimant has a physical impairment that has more than a minimal effect on basic work activities; and Claimant’s impairments have lasted continuously for more than twelve months.

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 (Listing) discusses the analysis and criteria necessary to a finding of a listed impairment. The Listing 12.04 *Affective Disorder* was reviewed. 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 physical impairment does not meet the intent or severity of the listings.

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 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.

Claimant testified that she currently has no physical limitations as a result of her impairments. In fact, Claimant is able to perform all household chores including gardening, laundry, shoveling snow, cooking and food shopping. When asked if there was anything that Claimant was unable to do in her household, Claimant was unable to think of anything. Furthermore, Claimant's social history indicates that she walks 1-2 miles at a time. In contrast, Claimant's internal medicine doctor restricted Claimant to lifting less than 10 lbs occasionally and stand/walk less than 2 hours in an 8 hour day. Claimant's obesity clearly could have

impacted the doctor's decision to restrict Claimant. However, Claimant is still able to maintain a wide variety of exertional activity on the many household chores that she performs.

Claimant also has mental limitations from depression. Claimant's own psychiatrist classified Claimant's mental illness as major recurrent depression and indicated that it affected Claimant's ability to hold a job on a sustained basis. However, the last three jobs that Claimant had were long term. Furthermore, Claimant's own psychiatrist rated her as "not significantly limited" in the majority of categories. Likewise, the Independent Psychiatrist opined that Claimant had no problems working or getting along with coworkers. Accordingly, the undersigned does not find that Claimant's mental illness significantly limits her ability to work.

Claimant's previous employment as a cashier is classified as semi-skilled, sedentary work. Her employment at [REDACTED] is considered light to medium semi-skilled work. Considering the medical evidence provided and Claimant's testimony, the undersigned finds that Claimant is currently able to perform only work that is sedentary in exertion. While Claimant would not be able to perform the work at [REDACTED], Claimant would be able to work again as an accounting cashier clerk. As Claimant's impairments do not prevent her from performing some of her past relevant work, Claimant is not considered disabled under the fourth step.

It is the finding of the undersigned, based upon the medical data and hearing record that Claimant is "not disabled" at the fourth step.

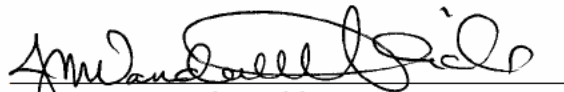
The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 1939 PA 280, as amended. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.1 et seq., and MAC R 400.3151-400.3180. 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 MA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that the Department was correct in determining that the claimant was not disabled for the purposes of the MA / SDA program and it is ORDERED that the Department's decision in this matter is AFFIRMED.



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

Date Signed: 10/12/09

Date Mailed: 10/13/09

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:

