

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.: 2009-25213

Issue No.: 2009, 4031

Case No.:

[REDACTED]

Load No.:

Hearing Date:

August 5, 2009

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted by hearing on April 20, 2009 pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department on April 22, 2009. At the hearing, the Claimant was present and testified. [REDACTED] Manager and [REDACTED] ES, 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") programs.

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 February 24, 2009.
2. Claimant is 5'7 1/2" tall and weighs 238 pounds.
3. Claimant is right handed.

4. Claimant is 51 years of age.
5. Claimant's impairments have been medically diagnosed as rheumatoid arthritis affecting the hands, ankles and feet; osteoarthritis with severe pain in joints; high blood pressure; depression and Hepatitis C.
6. Claimant's physical symptoms are pain in both knees, pain in ankles, pain in left foot, cramping both hands after use, difficulty walking, and difficulty climbing stairs.
7. Claimant's mental symptoms are decreased concentration, panic attacks (1x/week), crying spells (1-2x/week), nervousness, appetite problems, sleep disturbances, guilt feelings, hallucinations (Claimant sees shadows, sometimes hears voice), and paranoia.
8. Claimant takes the following prescriptions (side effects):
 - a) Barcardia – blood pressure
 - b) Vicodin every 4-6 hours
 - c) Lasix – water pill
 - d) Lexapro – depression
 - e) Travodone – helps her sleep
 - f) Nexium – acid reflux
 - g) Napron – pain meds
9. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
10. Claimant has a 10th grade education. Claimant was in special education classes due to difficulty learning.
11. Claimant is able to read, write and perform basic math skills.
12. Claimant last worked doing home health care for a handicapped boy. Claimant lifted (78 lbs.), fed and bathed the boy. Bending and stooping was required. Claimant also did housework and was on her feet a lot. Claimant could no longer perform her duties so she left the job in 2005 and returned in 11/07 for one month.
13. Claimant has prior employment experience as a cook at a restaurant. Claimant was required to stand on her feet. No lifting required.
14. Claimant testified to the following physical limitations:
 - Sitting: After two hours gets really stiff
 - Standing: 15 min.
 - Walking: 1 block before has to rest
 - Bend/stoop: Claimant says it is hard

- Lifting: Claimant does not lift anything any more. Strains knees legs when lift
 - Grip/grasp: Sometimes
15. Claimant performs household chores such as cooking. Claimant can make her bed and fold laundry. Claimant's daughter goes to laundry mat and to the grocery store.
16. Claimant uses a cane. [REDACTED] Hospital gave it to her on the 5/27/09 visit.
17. The following Medical Records were reviewed:

2/3/10 Physical Medicine IME (Exhibit 2)

COMPLAINTS: Rheumatoid Arthritis, Osteoarthritis, bilateral knee surgeries and bone spurs. Joint pain and stiffness in hands, ankles and feet. Numbness and tingling in feet and foot cramps. Stiffness and swelling in knees.

MEDICAL SOURCE STATEMENT: The patient is able to perform ADL's; however, getting in and out of the shower she states is difficult for her. She can carry, push, pull, lift, etc., all with significant limitation.

KNEE: Flexion in right limited to 65 degrees, and 100 degrees in left

IMPRESSION: Known case of rheumatoid arthritis and osteoarthritis affecting the hands, ankles, feet and knees. Osteoarthritis is affecting with severe pain in these joints non radiating in nature. There is evidence of osteoarthritis clinically in the knees with the right knee being severe and the left knee being moderately severe.

3/12/09 Medical Exam Report (Family Practice) (Exhibit 1, p. 9)

HX: Hypertension, Arthritis, Gerd, Hep C

GENERAL: Increased fatigue, unable to manipulate fine movements, Pt. unable to walk long distances

MUSCULOSKELETAL: Unable to unscrew caps. Walks with antalgic gait

PHYSICAL LIMITATIONS: Occasional lifting up to 10-20 lbs., No simple grasping or fine manipulating

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 Bridges/Program Administrative

Manual (BAM/PAM), the Bridges/Program Eligibility Manual (BEM/PEM) and the Reference Table (RFT).

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, the Claimant last worked regularly in 2005. Claimant also worked for one month in 2007. Claimant is not currently engaged in substantial gainful employment. 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 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 from medical providers showing diagnoses of Hypertension, Arthritis and Hepatitis C. The record does not show any medical evidence of depression. Claimant’s physician recommended physical restrictions and the independent medical examiner indicated that Claimant can push, pull, lift etc. with significant limitations. Therefore, the medical evidence has established that Claimant has physical 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 20 CFR Part 40, Subpart P, Appendix 1 (20 CFR 416.920(d), 416.925 and 416.926). 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 Listings 1.02 *Major dysfunction of the joints* 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. 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 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 to physical limitations. The Claimant's physician office indicated that Claimant was limited to lifting up to 10 or 20 lbs occasionally but only less than 10 lbs. frequently. Furthermore, Claimant would be unable to do any simple grasping or fine manipulating with either hand. These limitations are supported by the Physical Medicine IME who indicated that Claimant needs an ambulatory aid, had difficulty getting on and off the exam table and that Claimant would have significant limitations in carrying, pushing, pulling or lifting. Based on Claimant's physical limitations, the undersigned finds that Claimant is limited to sedentary work.

Claimant has a prior employment history of a direct care worker and a cook in a restaurant. Based on her testimony of her job duties, the direct care worker would have been considered unskilled and medium in exertional level as it required lifting up to 78 pounds. The restaurant cook was unskilled and light in exertional level as it required standing all day. Based

on this information the undersigned finds the Claimant unable to return to past relevant work in any of the above mentioned 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 at the limit of sedentary exertional range as light work requires prolonged periods of time spent walking or standing and lifting 10 lbs frequently. 20 CFR 416.967.

Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines 20 CFR

416.967(a) describes sedentary work:

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 fifty-one years is considered an *individual approaching advanced age*; a category of individuals in age group (50-54) who may be significantly limited in vocational adaptability if restricted to sedentary work. 20 CFR 404, Subpart P, Appendix 2, Rule 201.00(g). Considering Claimant's medical limitations, this Administrative Law Judge finds that claimant's impairments render her capable of doing only sedentary work. Given Claimant's age, education (10th grade education), and prior work experience of unskilled work, Claimant is disabled by law for the purposes of the programs. 20 CFR 404, Subpart P, Appendix 2, Table 1, Rule 201.09.

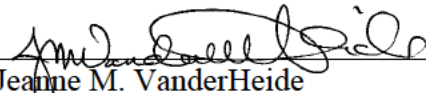
The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 1939 PA 280, as amended. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.1 et seq., and MAC R 400.3151-400.3180. 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 February 24, 2009, inclusive of retroactive benefits applied for.

Therefore the department is ordered to initiate a review of the application of February 24, 2009, if not done previously, to determine claimant's non-medical eligibility. The department shall inform the claimant of the determination in writing. The case shall be reviewed April, 2011.

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

Date Signed: April 13, 2010

Date Mailed: April 19, 2010

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 60 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.

JV/hw

cc:

