

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: 2009-5922

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 19, 2009

Ottawa County DHS

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

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. After due notice, a hearing was held on March 19, 2009. Claimant appeared and testified.

ISSUES

(1) Did the Department of Human Services properly deny claimant's application for Medical Assistance (MA) based on disability?

(2) Did the Department of Human Services properly deny claimant's application for State Disability Assistance (SDA)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

(1) Claimant is a 45 year-old female. Claimant is 5'9" tall and weighs approximately 245 pounds. Claimant's formal education consists of 12 years of school resulting in a High School Diploma.

- (2) Claimant has no past relevant work history.
- (3) On May 28, 2008, claimant applied for Medical Assistance (MA) based on disability and State Disability Assistance (SDA).
- (4) On August 20, 2008, claimant was given a physical examination by [REDACTED] [REDACTED] for purposes of determining disability.
- (5) On August 20, 2008. Claimant was given a psychological examination by [REDACTED] [REDACTED] for purposes of determining disability.
- (6) On September 17, 2008, the Medical Review Team determined that claimant is not disabled.
- (7) On September 22, 2008, claimant was sent notice her applications had been denied.
- (8) On November 10, 2008, claimant submitted a request for hearing.
- (9) On December 22, 2008, the State Hearing Review Team determined claimant is not disabled.
- (10) Claimant is not disabled because she is capable of doing light unskilled work.

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 400.10, *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).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or

department) administers the SDA program pursuant to MCL 400.10, *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).

Disability determinations done by the State of Michigan for Medical Assistance (MA) based on disability use the Social Security Administration standards found in United States Code of Federal Regulations (CFR) at Title 20, Part 416. The Federal Regulations define disability 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.

Disability determinations done by the State of Michigan for State Disability Assistance (SDA), use the Social Security Administration standards with one minor difference. For State Disability Assistance (SDA) the medically determinable physical or mental impairments that prevent substantial gainful activity must result in death or last at least 90 days.

In accordance with the Federal Regulations a disability determination is a sequential evaluation process of five steps which are followed in a set order. These are the five steps in the process:

(1) At the first step, your work activity, if any, is considered. If you are doing substantial gainful activity, you are not disabled under these standards.

(2) At the second step, your impairments are considered. Your impairments must be medically determinable physical or mental impairments. At this step the severity of the impairments are evaluated with regard to both the seriousness of the medical conditions and the duration of the conditions. A severe impairment, or combination of

impairments, limits your physical or mental ability to do basic work activities. If your medically determinable impairments are not severe, or do not last long enough, you are not disabled under these standards.

(3) At the third step, the severity of your impairments are considered again and compared to the Social Security Administration listings of impairments. If your impairments meet the applicable duration requirement, and meet or equal a Social Security Administration impairment listing, you are disabled under these standards. If you are not determined disabled at this step, the evaluation goes on to the next step.

(4) At the fourth step, we assess your residual functional capacity (RFC) using all the relevant evidence in your case record. Residual functional capacity is the most you can still do despite your limitations. Your residual functional capacity is your remaining physical, mental, and other abilities. At this step your residual functional capacity is compared with your past relevant work. If you can still do your past relevant work you are not disabled under these standards.

(5) At the fifth and last step, your residual functional capacity is considered along with your age, education, and work experience to see if you can make an adjustment to other work you have not previously done. If you have a combination of sufficient remaining abilities and transferable skills to adjust to other work, you are not disabled under these standards. If it is determined that you cannot make an adjustment to other work, we will find that you are disabled under these standards.

STEP 1

Claimant currently has no form of employment. Claimant is not engaged in any substantial gainful activity. Claimant is not considered ineligible at this step.

STEP 2

Claimant asserts she is disabled due to diabetes, hypertension, memory loss, panic attacks, stress, and plantar fasciitis. Evidence in the record from medical sources includes: documentation of a hospital stay from [REDACTED] when claimant had pneumonia, sepsis, and renal failure (Department Exhibit #2-107); a medical examination in August, 2008 (Department Exhibit #129-131); and a psychological examination from August, 2008 (Department Exhibit #123-128).

Claimant's pneumonia, sepsis, and renal failure were all resolved prior to her discharge from the hospital and lasted less than 90 days. Claimant's hospital discharge diagnosis included hypertension and diabetes.

In August, 2008 claimant was examined by [REDACTED] for purposes of disability determination. When claimant met with [REDACTED] she reported her chief complaints as diabetes and pneumonia. No residual findings of pneumonia were found.

[REDACTED] concluded that claimant had diabetes but found no evidence of sequela (a condition resulting from a disease). The doctor noted that claimant complained of pain in her right foot but denied any real neuropathy (a medical term describing disorders of the nerves). The doctor concluded that claimant's range of motion for the right foot was normal, claimant had minimal difficulty performing orthopedic maneuvers, and her gait was stable.

At the examination by [REDACTED] claimant's blood pressure was 120/86. The doctor made no diagnosis of hypertension. It is noted that blood pressure of 120-139/80-89 is considered prehypertension, 140-159/90-99 is stage 1 hypertension.

On [REDACTED] claimant received a psychological examination by [REDACTED]. During the examination claimant stated she had panic attacks six or seven years ago, received medication for it and they stopped. However, claimant stated she had two more last week. The

examiner noted that claimant's memory and concentration seemed somewhat poor. It was also noted that claimant "is under a great deal of stress with finances, her husband's employment and his depression as well as her own health problems." The diagnosis of the psychological examination was major depression – moderate and anxiety disorder.

Evidence in the record shows that claimant had a severe impairment of pneumonia, sepsis, and renal failure. Those conditions did not last more than 90 days so they do not constitute disability.

The evidence shows that claimant has currently been diagnosed with moderate depression and anxiety disorders. The duration of the mental disorders is not clear. The evidence also shows that claimant has had plantar fasciitis and diabetes for more than 12 months. Claimant is not considered ineligible at this step.

STEP 3

At this step, we compare claimant's medical impairments to the Social Security Administration listing of impairments. Claimant's plantar fasciitis does not meet any of the listings in section 1.00 Musculoskeletal Systems.

The appropriate listing for claimant's diabetes is 9.08. That listing requires:

9.08 *Diabetes mellitus*. With:

- A. Neuropathy demonstrated by significant and persistent disorganization of motor function in two extremities resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C); or
- B. Acidosis occurring at least on the average of once every 2 months documented by appropriate blood chemical tests (pH or PCO₂ or bicarbonate levels); or
- C. Retinitis proliferans; evaluate the visual impairment under the criteria in 2.02, 2.03, or 2.04.

Claimant's diabetes does not equal or meet any of these criteria.

The appropriate listing for claimant's depressive disorder is 12.04. Claimant's depressive disorder does not meet or equal the listing.

The appropriate listing for claimant's anxiety disorder is 12.06. Claimant's anxiety disorder does not meet or equal the listing.

Claimant is not found eligible at this step.

STEP 4

At this step, we consider claimant's residual functional capacity to determine if she could do her past relevant work. Claimant is 45 years old, has a high school education although she is weak in math skills, and has no employment history. Since claimant has no past relevant work, assessment of her residual functional capacity cannot be compared to anything. Claimant is not found ineligible at this step.

STEP 5

At this step we consider claimant's residual functional capacity to determine if she could adjust to other work. Claimant is 45 years old, has a high school education although she is weak in math skills, and has no employment history.

Age is one of the aspects of your vocational profile considered in this step. The following age categories are established in 20 CFR 416.963 for use in the Social Security Administration Medical-Vocational Guidelines.

A younger person is under age 50. If you are a younger person we generally do not consider that your age will seriously affect your ability to adjust to other work. However, in some circumstances, we consider that persons age 45-49 are more limited in their ability to adjust to other work than persons who have not attained age 45.

A person closely approaching advanced age is 50-54 years old. If you are closely approaching advanced age, we will consider that your age along with a severe impairment(s) and limited work experience may seriously affect your ability to adjust to other work.

A person of advanced age is over 55. We consider that at advanced age, age significantly affects a person's ability to adjust to other work. We have special rules for persons of advanced age and for persons in this category who are closely approaching retirement age (age 60-64).

Education is another aspects of your vocational profile considered in this step. The following categories of education are established in 20 CFR 416.964 for use in the Social Security Administration Medical-Vocational Guidelines.

(1) *Illiteracy*. Illiteracy means the inability to read or write. We consider someone illiterate if the person cannot read or write a simple message such as instructions or inventory lists even though the person can sign his or her name. Generally, an illiterate person has had little or no formal schooling.

(2) *Marginal education*. Marginal education means ability in reasoning, arithmetic, and language skills which are needed to do simple, unskilled types of jobs. We generally consider that formal schooling at a 6th grade level or less is a marginal education.

(3) *Limited education*. Limited education means ability in reasoning, arithmetic, and language skills, but not enough to allow a person with these educational qualifications to do most of the more complex job duties needed in semi-skilled or skilled jobs. We generally consider that a 7th grade through the 11th grade level of formal education is a limited education.

(4) *High school education and above*. High school education and above means abilities in reasoning, arithmetic, and language skills acquired through formal schooling at a 12th grade level or above. We generally consider that someone with these educational abilities can do semi-skilled through skilled work.

(5) *Inability to communicate in English*. Since the ability to speak, read and understand English is generally learned or increased at school, we may consider this an educational factor. Because English is the dominant language of the country, it may be difficult for someone who doesn't speak and understand English to do a job, regardless of the amount of education the person may have in another language. Therefore, we consider a person's ability to communicate in English when we evaluate what work, if any, he or she can do. It generally doesn't matter what other language a person may be fluent in.

Work skills are another aspects of your vocational profile considered in this step. The following categories of work skills are established in 20 CFR 416.968 for use in the Social Security Administration Medical-Vocational Guidelines.

In order to evaluate your skills and to help determine the existence in the national economy of work you are able to do, occupations are classified as unskilled, semi-skilled, and skilled. In classifying these occupations, we use materials published by the Department of Labor. When we make disability determinations under this subpart, we use the following definitions:

(a) *Unskilled work.* Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength. For example, we consider jobs unskilled if the primary work duties are handling, feeding and off bearing (that is, placing or removing materials from machines which are automatic or operated by others), or machine tending, and a person can usually learn to do the job in 30 days, and little specific vocational preparation and judgment are needed. A person does not gain work skills by doing unskilled jobs.

(b) *Semi-skilled work.* Semi-skilled work is work which needs some skills but does not require doing the more complex work duties. Semi-skilled jobs may require alertness and close attention to watching machine processes; or inspecting, testing or otherwise looking for irregularities; or tending or guarding equipment, property, materials, or persons against loss, damage or injury; or other types of activities which are similarly less complex than skilled work, but more complex than unskilled work. A job may be classified as semi-skilled where coordination and dexterity are necessary, as when hands or feet must be moved quickly to do repetitive tasks.

(c) *Skilled work.* Skilled work requires qualifications in which a person uses judgment to determine the machine and manual operations to be performed in order to obtain the proper form, quality, or quantity of material to be produced. Skilled work may require laying out work, estimating quality, determining the suitability and needed quantities of materials, making precise measurements, reading blueprints or other specifications, or making necessary computations or mechanical adjustments to control or regulate the work. Other skilled jobs may require dealing with people, facts, or figures or abstract ideas at a high level of complexity.

The Social Security Administration Medical-Vocational Guidelines are divided into categories based on the maximum sustained work capability a person still has. Those categories are defined in 20 CFR 416.967.

(a) *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.

(b) *Light work.* Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

(c) *Medium work.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work.

(d) *Heavy work.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work.

██████████ medical examination in August, 2008 showed that claimant had no physical limitations. Claimant's psychological examination in August showed that her depression has had some impact on her memory and concentration. However, there was no indication of any inability to understand, carry out instructions, or respond appropriately to supervisors, coworkers, and work pressures.

During the hearing claimant stated she is looking for work, would like to get some training to acquire some skills, and feels she is capable of doing light work. Under the Social Security Administration Medical-Vocational Guidelines Claimant's residual functional capacity and vocational profile show she is able to adjust to unskilled light work under Rule 202.17. Claimant is not disabled under these standards.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services properly denied claimant's application for Medical Assistance (MA) based on disability and State Disability Assistance (SDA).

It is ORDERED that the actions of the Department of Human Services, in this matter, are UPHELD.

/s/


Gary F. Heisler
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 24, 2009

Date Mailed: April 29, 2009

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.

GFH 

cc: 