

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: 2009-10882
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: 3 [REDACTED]
Hearing Date:
April 22, 2009
Ingham 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 April 22, 2009. Claimant appeared and testified.

ISSUES

(1) Did the Department of Human Services properly determine that Claimant is not disabled and deny Claimant's application for Medical Assistance (MA) based on disability?

Did the Department of Human Services properly determine that Claimant is not disabled and 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 62 year-old female. Claimant is 67 inches tall and weighs approximately 160 pounds. Claimant's formal education consists of 14 years of school to obtain an Associates Degree.

- (2) Claimant has past relevant work as a massage therapist, an elder care provider, a minister, a house hold chore provider, and a handy person doing repairs, landscaping, and snow removal. Claimant also has owned 2 businesses.
- (3) Claimant is currently employed as a massage therapist.
- (4) On October 13, 2008, Claimant applied for Medical Assistance (MA) based on disability and State Disability Assistance (SDA).
- (5) Claimant asserts disability due to a torn meniscus in her left knee and disfigurement of her nose from a dog bite.
- (6) On November 17, 2008, the Department of Human Services Medical Review Team determined that Claimant was not disabled in accordance with the standards for Medical Assistance (MA) or State Disability Assistance (SDA).
- (7) On November 21, 2008, Claimant was sent notice of the Department's determination.
- (8) On December 9, 2008, Claimant submitted a request for hearing.
- (9) On February 5, 2009, the Department of Human Services State Hearing Review Team determined that Claimant was not disabled in accordance with the standards for Medical Assistance (MA) or State Disability Assistance (SDA).

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 law defines 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 at least 12 months. To meet this definition, you must have severe impairments that make you unable to do your past relevant work or any other substantial gainful work that exists in the national economy.

Disability determinations done by the State of Michigan, for State Disability Assistance (SDA), use the same 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 an initial disability determination is a sequential evaluation process. The evaluation consists of five steps that are followed in a set order.

STEP 1

At this step a determination is made on whether Claimant is engaging in 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. Gainful work activity is work activity that you do for pay or profit (20 CFR 416.972). If you are engaged in SGA, you are not disabled regardless of how severe your physical or mental impairments are and regardless of your age, education, and work experience.

Claimant testified she is currently self-employed as a massage therapist. No specific evidence is contained in the record to determine if Claimant's self-employment is substantial gainful activity. Claimant is not found ineligible at this step.

STEP 2

At the second step it is determined whether you have a medically determined impairment that is severe or a combination of impairments that is severe (20CFR 416.920(c)). An impairment or combination of impairments is severe within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is not severe when medical and other evidence establishes only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work (20 CFR 416.921). In addition to the limiting effect of the impairments they must also meet durational requirements, 90 days for State Disability Assistance (SDA) and 12 months for Medical Assistance (MA) based on disability. If your medically determinable impairments are not severe you are not disabled.

Claimant asserts disability based upon a tear in the medial meniscus of her left knee and disfigurement of her nose from a dog bite. Relevant evidence in the record from medical sources includes: a radiology consultation done by [REDACTED] on September 26, 2008; a Medical

Examination Report (form DHS-49) filled out by [REDACTED] on October 27, 2008; and a Medical Examination Report (form DHS-49) filled out by [REDACTED] on October 21, 2008.

At the radiology consultation on September 26, 2008, [REDACTED] determined that Claimant had moderately severe osteoarthritic changes to her left knee. The Doctor also determined Claimant had a large radial tear of the medial meniscus.

On [REDACTED], [REDACTED] filled out a Medical Examination Report (form DHS-49) on Claimant. [REDACTED] is Claimant's family doctor and listed his specialty as internal medicine. [REDACTED] listed Claimant's impairment and chief complaint as "knee pain". The only abnormality the Doctor listed was "limited walking due to knee pain and swelling" under musculo-skeletal. The Doctor indicated that Claimant is able to use her arms and hands for: simple grasping; reaching; pushing and pulling; and fine manipulation. The Doctor also indicated that Claimant does not require any assistive devices for ambulation and would be expected to return to work after surgery. In spite of these assessments, the Doctor limited Claimant to no lifting at all and no standing at all. This is the only medical source evidence addressing physical limitations for Claimant. The complete limitation on lifting and standing is inconsistent with the objective medical evidence in the record.

On [REDACTED], [REDACTED] filled out a Medical Examination Report (form DHS-49) on Claimant. [REDACTED] specializes in plastic/reconstructive surgery. [REDACTED] did not indicate that Claimant had any physical or mental limitations

The objective medical evidence does show that Claimant has a large radial tear of the medial meniscus of her left knee. This condition would limit her ability to do some work activities. The condition has existed for more than 12 months. Claimant is found neither disabled nor ineligible at this step and the analysis continues.

STEP 3

At the third step it is determined whether your impairments meet or equal the criteria of an impairment listed in a Social Security Administration impairment listing 20 CFR Part 404, Subpart P, Appendix 1. If your impairment meets or equals the criteria of a listing and meets the duration requirement, you are disabled.

Claimant's medical condition was compared with the Social Security Administration impairment listing 1.02. That listing is:

1.02 Major dysfunction of a joint(s) (due to any cause): Characterized by gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:

A. Involvement of one major peripheral weight-bearing joint (*i.e.*, hip, knee, or ankle), resulting in inability to ambulate effectively, as defined in 1.00B2b;

or

B. Involvement of one major peripheral joint in each upper extremity (*i.e.*, shoulder, elbow, or wrist-hand), resulting in inability to perform fine and gross movements effectively, as defined in 1.00B2c.

(1) *Definition.* Inability to ambulate effectively means an extreme limitation of the ability to walk; *i.e.*, an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. Ineffective ambulation is defined generally as having insufficient lower extremity functioning (see 1.00J) to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities. (Listing 1.05C is an exception to this general definition because the individual has the use of only one upper extremity due to amputation of a hand.)

Claimant's medical condition did not meet or equal this listings because she is still able to ambulate effectively. Claimant is not found disabled at this step.

STEP 4

At the fourth step we assess your residual functional capacity (RFC) to determine if you are still able to perform work you have done in the past. Your RFC is your ability to do physical and mental work activities on a sustained basis despite limitations from your impairments. Your RFC is assessed using all the relevant evidence in the record. If you can still do your past relevant work you are not disabled under these standards.

Claimant reports past relevant work as a massage therapist, an elder care provider, a minister, a house hold chore provider, and a handy person doing repairs, landscaping, and snow removal. At this hearing Claimant testified she is currently self-employed as a massage therapist.

At a radiology consultation on [REDACTED], [REDACTED] determined that Claimant had moderately severe osteoarthritic changes to her left knee. The Doctor also determined Claimant had a large radial tear of the medial meniscus.

On [REDACTED], [REDACTED] filled out a Medical Examination Report (form DHS-49) on Claimant. [REDACTED] is Claimant's family doctor and listed his specialty as internal medicine. [REDACTED] listed Claimant's impairment and chief complaint as "knee pain". The only abnormality the Doctor listed was "limited walking due to knee pain and swelling" under musculo-skeletal. The Doctor indicated that Claimant is able to use her arms and hands for: simple grasping; reaching; pushing and pulling; and fine manipulation. The

Doctor also indicated that Claimant does not require any assistive devices for ambulation and would be expected to return to work after surgery. In spite of these assessments, the Doctor limited Claimant to no lifting at all and no standing at all. This is the only medical source evidence addressing physical limitations for Claimant. The complete limitation on lifting and standing is inconsistent with the objective medical evidence in the record.

20 CFR 416.927 governs the evaluation of opinion evidence in disability determinations.

Generally, we give more weight to opinions from your treating sources, since these sources are likely to be the medical professionals most able to provide a detailed, longitudinal picture of your medical impairment(s) and may bring a unique perspective to the medical evidence that cannot be obtained from the objective medical findings alone or from reports of individual examinations, such as consultative examinations or brief hospitalizations. If we find that a treating source's opinion on the issue(s) of the nature and severity of your impairment(s) is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in your case record, we will give it controlling weight. When we do not give the treating source's opinion controlling weight, we apply the factors listed in paragraphs (d)(2)(i) and (d)(2)(ii) of this section, as well as the factors in paragraphs (d)(3) through (d)(6) of this section in determining the weight to give the opinion. We will always give good reasons in our notice of determination or decision for the weight we give your treating source's opinion.

In this case, [REDACTED] opinion that Claimant can do no lifting and no standing is inconsistent with the other substantial evidence in the case record. Claimant testified that she is currently self-employed as a message therapist. That activity requires extended standing. Claimant testified that following a message session she has to sit with her leg elevated and recuperate because the level of pain in her knee, on a scale of 1 to 10, is approximately a 5.

The Doctor indicated that Claimant can ambulate without any assistive devices. Ambulation is done in a standing position and for Claimant to ambulate requires that her leg be able to bear at least her body weight. The ability to ambulate and the ability to use her arms and

hands for: simple grasping; reaching; pushing and pulling; and fine manipulation, indicate Claimant has the capacity for at least some light lifting.

Your residual functional capacity is your remaining physical, mental, and other abilities.

Classifications of work based on physical exertion requirements 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.

The evidence in this record shows that Claimant has the residual functional capacity to perform a full range of sedentary work. Claimant is currently performing past relevant work as a message therapist. Claimant's past relevant work as a minister and a household chore provider would also be within her residual functional capacity.

Claimant is found ineligible at this step because she is capable of performing past relevant work.

STEP 5

At the fifth step your residual functional capacity (RFC) 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. If it is determined that you cannot make an adjustment to other work, we will find that you are disabled.

Claimant is 62 years old, has a high school education and above, has a work history which entailed transferable skilled and semi-skilled work, and has the residual functional capacity to perform sedentary work.

In accordance with Social Security Administration Medical-Vocational Guideline Rule 201.07 Claimant is not disabled.

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 determined that Claimant is not disabled and 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: February 16, 2010

Date Mailed: February 18, 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 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:

