

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: 2009-11949

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date: [REDACTED]

[REDACTED]

Ogemaw 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 telephone hearing was held on [REDACTED]. Claimant appeared and testified.

ISSUES

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?

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 22 year old female. Claimant is 62 inches tall and weighs approximately 170 pounds. Claimant's formal education consists of 12 years of school and she was in special education classes during all of her formal education.

(2) Claimant has past relevant work experience in hotel housekeeping.

(3) Claimant suffered a traumatic brain injury in an automobile accident at age 2. Claimant has damage to the left side of her brain, which appears to be the basis for her learning disabilities and the cause of her seizure activity. Seems to be she has a history of seizures and asserts disability based on her epilepsy.

(4) Claimant last worked in 2009 as a hotel housekeeper on a trail basis through [REDACTED] (MRS). Claimant reports she left that employment because she was allergic to the cleaning products and got sick from doing the job.

(5) On August 27, 2008, Claimant applied for Medical Assistance (MA) based on disability and State Disability Assistance (SDA).

(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 20, 2008, Claimant was sent notice of the Department's determination.

(8) On December 23, 2008, Claimant submitted a request for hearing.

(9) On February 11, 2009, the 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.

At step 1, a determination is made on whether Claimant is engaging in substantial gainful activity (20 CFR 416.920(b)). If you are performing activities for pay or profit, we will use 20 CFR 416.971 through 416.975 to evaluate the activities to determine if they are substantial gainful activity. Substantial gainful activity is defined as work activity: that is both substantial and gainful; and 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 substantial gainful activity, you are not disabled regardless of how severe your physical or mental impairments are and regardless of your age, education, and work experience.

Claimant is not currently engaged in substantial gainful activity. However, she did work in hotel housekeeping and reports the reason she left was that she was allergic to the cleaning products and they made her sick. Claimant asserts she is disabled due to epilepsy but she did not leave the employment due to her epilepsy. Analysis of all steps will be conducted in order to provide a full analysis of Claimant's disability assertion.

At step 2, it is determined whether you have a severe physical or mental impairment that meets the duration requirement or a combination of impairments that is severe and meets the duration requirement (20CFR 416.920). 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. When we talk about basic work activities, we mean the abilities and aptitudes necessary to do most jobs. Examples of these 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.

An impairment or combination of impairments is not severe if it does not significantly limit your physical or mental ability to do basic work activities (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 we determine that your impairments are not severe, you are not disabled.

Claimant asserts disability based upon epilepsy and seizure activity. Relevant evidence in the record from medical sources includes: a Medical Examination Report (form DHS-49) from [REDACTED] dated [REDACTED]. (Pages 35 & 36) [REDACTED] is a neurologist who has been treating Claimant since [REDACTED]. Claimant's diagnosis was listed as partial onset epilepsy. The only abnormalities noted by the Doctor were in the mental area. The Doctor listed that Claimant had a head trauma at age 2 and special education classes throughout school. [REDACTED] recommended minor physical limitations. The Doctor specified that Claimant has mental limitations in sustained concentration, reading and writing, memory, and social interaction. The Doctor also specifically stated that Claimant has speech and cognitive delays.

There is a Medical Examination Report (form DHS-49) from [REDACTED] dated [REDACTED]. (Pages 22 & 23) [REDACTED] is a family practitioner and has been treating Claimant since [REDACTED]. The Doctor listed Claimant's diagnosis as seizure disorder and learning disability. [REDACTED] listed minor physical limitations and specified there were no abnormal finding on his

physical examination that the limitations were due to Claimant's seizure problems. The Doctor also listed mental limitations for Claimant.

There is a [REDACTED] report from [REDACTED] from a follow up appointment. (Pages 42 & 43) The Doctor noted that Claimant had been seizure free for greater than six months. The Doctor recommended continuing the Trileptal.

There is a [REDACTED] report from [REDACTED] from a follow up appointment after diagnosis and medication prescription. (Pages 44 & 45) The report states that prescribed medication (Trileptal) are effective and recommend continuing the medication. [REDACTED] also wrote that it was his recommendation that Claimant could work as long as she was in a safe environment with no risks such as hot objects, sharp objects, or heights.

There is also a neuropsychological test of Claimant done on [REDACTED] by [REDACTED] (Pages 57-63) The testing showed that Claimant had a full scale IQ of 72, a reading and spelling level equivalent to grade 1, and arithmetic skills equivalent to grade 4. [REDACTED] reported that Claimant's combined cognitive/verbal and visual-motor skills are mostly in the borderline range.

Claimant's impairment is severe because it does limit some of her abilities to work and has persisted for at least 12 months.

At step 3, 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 epilepsy impairment was compared with the Social Security Administration impairment listing 11.03. That listing is:

11.03 Epilepsy—nonconvulsive epilepsy (petit mal, psychomotor, or focal), documented by detailed description of a typical seizure pattern, including all associated phenomena; occurring more frequently than once weekly in spite of at least 3 months of prescribed treatment. With alteration of awareness or loss of consciousness and transient postictal manifestations of unconventional behavior or significant interference with activity during the day.

Claimant's epilepsy did not meet or equal these listings because the objective medical evidence in the record shows that the medication (Trileptal) prescribed by [REDACTED] controls Claimant's epilepsy.

At step 4, 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 in hotel housekeeping which she terminated due to allergic reaction to the cleaning products. At this hearing Claimant specifically testified that she is not sure if she could work due to the fact her balance is not good and she has trouble reading and writing.

Your residual functional capacity is your remaining physical, mental, and other abilities. Those abilities are outlined in 20 CFR 416.945.

Physical abilities. When we assess your physical abilities, we first assess the nature and extent of your physical limitations and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to perform certain physical demands of work activity, such as sitting, standing, walking, lifting, carrying, pushing, pulling, or other physical functions (including manipulative or postural functions, such as reaching, handling, stooping or crouching), may reduce your ability to do past work and other work.

Mental abilities. When we assess your mental abilities, we first assess the nature and extent of your mental limitations and restrictions and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to carry out certain mental activities, such as limitations in understanding, remembering, and carrying out instructions, and in responding appropriately to supervision, coworkers, and work pressures in a work setting, may reduce your ability to do past work and other work.

Other abilities affected by impairment(s). Some medically determinable impairment(s), such as skin impairment(s), epilepsy, impairment(s) of vision, hearing or other senses, and impairment(s) which impose environmental restrictions, may cause limitations and restrictions which affect other work-related abilities. If you have this type of impairment(s), we consider any resulting limitations and restrictions which may reduce your ability to do past work and other work in deciding your residual functional capacity.

Classifications of work based on physical exertion requirements are defined in 20 CFR 416.967.

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.

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.

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.

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.

Based on the physical limitations recommended by Claimant's two treating physicians, Claimant has the physical residual functional capacity to perform sedentary and light work. Claimant has mental limitations in sustained concentration, reading and writing, memory, and social interaction. Claimant's past work experience in hotel housekeeping is within her residual functional capacity. Claimant reported she left that work due to allergies to the cleaning products. There is no evidence in the record indicating what cleaning products were used, or how they were used. There is no objective medical evidence in the record showing Claimant has any impairment due to allergies. The evidence that is in this record shows that Claimant is capable of performing her past relevant work in hotel housekeeping. Claimant is found ineligible at this step. In order to provide a complete evaluation of Claimant disability assertion the analysis will continue.

At step 5, 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.

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:

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.

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.

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. Claimant is 22 years old, has the residual functional capacity for light work, and has unskilled work experience.

Even though Claimant technically completed 12 years of school, her neuropsychological testing indicates she should be classified as illiterate for this analysis.

Social Security Administration Medical-Vocational Guidelines Rule 202.16 indicates that a person of Claimant's age, who is illiterate or unable to communicate in English, and has unskilled or no work experience, 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.

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 2, 2010

Date Mailed: April 6, 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.

2009-11949/GFH

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/alc

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