

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: 2009-12005
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 6, 2009
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted on April 6, 2009 pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department on January 9, 2009. The undersigned Administrative Law Judge has written this hearing decision after review of the evidence in the record. At the hearing, the Claimant was present and testified. [REDACTED], Claimant's mother was also present. [REDACTED] was present and represented Claimant. Charlotte Metcalf 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 filed for MA on 11/3/08. Claimant requested MA retroactive to September 2008.
2. Claimant is 5' 10" tall and weighs 180 pounds.

3. Claimant is 28 years of age.
4. Claimant's impairments have been medically diagnosed as closed head injury, seizure disorder, left sided herniated disc at C6-7, L4-L5 & L5-S1 radiculopathy, C5-C6 & C8-T1 radiculopathy, occipital neuralgia and depression.
5. Claimant's physical symptoms are headaches, pain in back of head, seizures, dropping things, inability to feel hot or cold in her hands, and pins & needles in arms.
6. Claimant's mental symptoms are short term memory loss, difficulty following instructions, depression, panic attacks – whenever there is water on floor or a lot of noise – 4x/week, crying spells, confusion and inability to count money, getting upset very easily, sleep disturbances, fatigue, suicidal thoughts, guilt feelings and low self-esteem.
7. Claimant's injuries stem from a slip and fall in water which resulted in Claimant hitting her head on the floor on [REDACTED]
8. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
9. Claimant has a high school education and 3 semesters of college.
10. Claimant is able to read and write perform basic math skills. However, Claimant testified that if the amount consists of greater than \$10.00, Claimant has difficulty performing the basic math.
11. Claimant last worked on 7/9/05 at [REDACTED] as a cashier.
12. Claimant has previous employment experience as a day care provider, including driving kids to preschool.
13. Claimant testified to the following physical limitations:

[REDACTED] in part (Exhibit 1, pp 25-30)

MENTAL RESIDUAL FUNCTION CAPACITY

ASSESSMENT: Markedly limited as follows:

1. The ability to understand and remember detailed instructions.
2. The ability to carry out detailed instructions.
3. The ability to maintain attention and concentration for extended periods.
4. The ability to make simple work related decisions.
5. The ability to work in coordination with or proximity to others without being distracted by them.
6. The ability to complete a normal workday without interruptions from psychologically based symptoms and to perform at a consistent basis without an unreasonable number and length of rest periods.
7. The ability to accept instructions and respond appropriately to criticism from supervision.
8. The ability to travel in unfamiliar places or use public transportation.
9. The ability to set realistic goals or make plans independently of others.

[REDACTED], in part (Exhibit 2, p. 9-10)

IQ of 85 one year before injury at restaurant. Current full scale IQ 83. Speech was mildly dysarthric. She was clearly slow in responding and processing information. She displayed a poor memory especially regarding details of her history. Mood was mildly depressed.

IMPRESSION: Probable conversion disorder with non-epileptic seizures, borderline mental retardation with possible mild subsequent cognitive impairment related to head injury.

[REDACTED] in part (Exhibit 2, pp. 16-17)

IMPRESSION: At this point, given her radiological and clinical findings, we do not suspect any mastoid pathology or infection. Noticeable, however, is bilateral temporomandibular joint clicking and significant tenderness. This could explain her preauricular and post aurilar oral mastoid pain.

RECOMMENDATIONS: Soft diet for two weeks, warm compresses to TMJs, massage of bilateral TMJs, referral for potential bite block.

[REDACTED], in part (Exhibit 2, pp. 21-23)

[REDACTED]
(Exhibit 1, pp. 33-34)

PHYSICAL LIMITATIONS: No lifting, Stand/walking less than 2 hrs in 8 hour day. Needs cane 24/7.

MRI Brain, [REDACTED], in part (Exhibit 8, p. 1)

- Small cystic lesion resting along superior margin of pituitary gland, likely a Rathke's pouch cyst.
- Large amounts of fluid in right mastoid air cells and changes surrounding the right maxillary sinus

MRI C-Spine, [REDACTED], in part (Exhibit 8, p. 2-3)

Most likely L-sided herniated disc at C6-C7. Bulging disc at C5-C6.

EMG Lower Extremities, [REDACTED], in part (Exhibit 7, p. 6-7)

Chronic radiculopathy at L4-L5 & L5-S1 on both sides

EMG Lower Extremities, [REDACTED], in part (Exhibit 7, p. 4-5)

Chronic radiculopathy at L4-L5 & L5-S1 on both sides

[REDACTED], in part (Exhibit 2)

[REDACTED] endorses a pattern of cognitive symptoms that was at the most intense level of severity, indicating a propensity to over-state the range and severity of her cognitive and emotional symptoms. That is, she obtains a Subjective Distortion Index, from the Neuropsychological Impairment Scale, which was elevated above

the 99th percentile. This indicated that she presented a perception of cognitive impairment that was both beyond her level of injury severity and inconsistent with her level of capability, based on test performance.

EMG Upper Extremities, [REDACTED] in part (Exhibit 7, p. 1-2)

Chronic radiculopathy at C5-C6 at the right and C8-T1 at both sides.

MRI C-Spine, [REDACTED], in part (Exhibit 6)

Mild broad based disc bulge which slightly effaces the anterior thecal sac and slight abutment of the anterior cord.

CT Head without contrast, [REDACTED], in part (Exhibit 6)

Negative CT of the brain without contrast

17. Other records examined are as follows:

[REDACTED], in part

Plaintiff testified that she was in special education in elementary and middle school and dropped out of the beginning algebra. (p. 5)

Psychologist [REDACTED] testified that he did a neuropsychological evaluation . . . the two testings revealed that post-injury reading ability was essentially the same as before; her academic functioning also essentially the same, her attention and concentration significantly decreased even though she previously tested positive for attention deficit disorder is [REDACTED]. . . Her intellectual functioning was less than prior to the fall especially visual and problem solving. She would have difficulty functioning at the work place especially filtering information within noisy environments, retaining information and sequencing of tasks.

Psychologist [REDACTED] testified that the plaintiff was not fit for any type of competitive employment at the present time. She is not able to drive, she is not cognitively ready and her ability to make decisions is compromised. (p. 8).

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). In this case, under the first step, the Claimant last worked 7/9/2005. 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 F.2d 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 closed head injury, seizure disorder, left sided herniated disc at C6-7, L4-L5 & L5-S1 radiculopathy, C5-C6 & C8-T1 radiculopathy, occipital neuralgia and depression. Claimant testified to physical limitations in terms of sitting, standing, walking and lifting which are supported by Claimant's physicians. In addition, Claimant testified that she needs help

getting into the shower, washing her hair, help counting out money and change at the store and supervision when cooking.

Conflicting medical opinions exist and will be addressed here. [REDACTED], a neuropsychiatrist and [REDACTED] a psychologist, both find Claimant suffering from mental impairments that affect Claimant's ability to process information or work competitively. This is in stark contrast to [REDACTED] who performed a neuropsychological evaluation and determined that Claimant was exaggerating her symptoms.

In determining the credibility of the individual's statements, the adjudicator must consider the entire case record, including the objective medical evidence, the individual's own statements about symptoms, statements and other information provided by treating or examining physicians or psychologists and other persons about the symptoms and how they affect the individual, and any other relevant evidence in the case record. An individual's statements about the intensity and persistence of pain or other symptoms or about the effect the symptoms have on his or her ability to work may not be disregarded solely because they are not substantiated by objective medical evidence. SSR 97-6p. Furthermore, generally more weight is given to treating sources. 20 CFR 416.927(4)(d)(2).

This administrative law judge finds that Claimant testified credibly. She presented with a flat affect and needed time to process the information and provide responses. Both [REDACTED] and [REDACTED] are Claimant's own treating physicians and have a long relationship treating Claimant, while [REDACTED] saw Claimant only on two separate days for evaluation. Therefore, the undersigned gives more weight to the medical opinions of [REDACTED] and [REDACTED] and finds that the testimony of Claimant's impairments is credible.

The medical evidence has established that Claimant has physical and mental 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 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 discusses the analysis and criteria necessary to a finding of a listed impairment. The Listing 12.0 *Mental Disorders* and 11.0 *Neurological Disorders* were 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 physical and or mental impairments do not meet the intent or severity of the listings alone. 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 has physical impairments of lumbar and cervical radiculopathy and a herniated

cervical disc which impair her ability to walk, lift, stand and sit for any period of time. Claimant testified that she has pain in her back and neck as well as headaches that affect her daily. Claimant is on several medications which also affect her ability to sleep and feel rested. Claimant testified that she is unable to sleep more than two hours at night and usually takes two naps during the daytime to catch up. Claimant has seizures and difficulty hanging on to anything in her hands. ██████████ testified that numerous dishes had been broken by Claimant dropping things. ██████████, Claimant's internist, indicated that Claimant is unable to lift anything at all and constantly requires a cane due to the seizures.

Claimant has mental impairments as well, having been diagnosed with probable conversion disorder with non-epileptic seizures and borderline mental retardation with possible mild subsequent cognitive impairment related to head injury. Claimant has impaired memory, concentration and difficulty reading/writing or performing simple math. In addition, Claimant suffers from panic attacks. These mental impairments result in marked deficits that affect Claimant's ability to follow instructions or make work related decisions.

This Administrative Law Judge finds that the combination of Claimant's physical and mental impairments render Claimant unable to do even sedentary work. Claimant is therefore disabled for the purposes of the programs. 20 CFR 404, Subpart P, Appendix 2, Rule 201.00(h). It is not necessary to evaluate step 5.

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 on the findings of fact and conclusions of law, decides that the Claimant is "disabled" for purposes of the Medical Assistance program.

It is ORDERED; the Department's determination in this matter is REVERSED.

Accordingly, The Department is ORDERED to initiate a review of the Claimant's 11/3/08 application to determine if all other non-medical eligibility criteria are met. The Department shall inform Claimant of its determination in writing. Assuming Claimant is otherwise eligible for program benefits, the Department shall review Claimant's continued eligibility for program benefits in April, 2010.

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

Date Signed: 04/16/09

Date Mailed: 04/16/09

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:

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