

STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

██████████

Claimant

Reg No: 2009-14275

Issue No: 2009

Case No:

██████████

Load No:

Hearing Date:

April 20, 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. At the hearing, the Claimant was present and testified. ██████████ was present and represented Claimant. Betty McBride 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 9/17/08. Claimant requested MA retroactive to July 2008.
2. Claimant's impairments have been medically diagnosed as asthma, left shoulder arthritis, right knee effusion, degenerative joint disease, depression, and schizoaffective disorder.

3. Claimant's physical symptoms are pain in left shoulder, right knee pain and swelling, hard of hearing in left ear, abdominal pain, shortness of breath, headaches, and hot flashes.
4. Claimant's mental symptoms are forgetfulness, poor concentration, crying spells, fatigue and depression.
5. Claimant takes the following prescriptions:

[REDACTED]

Claimant suffers from the side effect of being tired.

6. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
7. Claimant is 5'6" tall and weighs 187 pounds.
8. Claimant is right handed.
9. Claimant is 51 years of age.
10. Claimant has a 10<sup>th</sup> grade education.
11. Claimant is able to read and write, but not well. She can add and subtract, but cannot multiply or divide.
12. Claimant last worked in 2002 as a sandwich maker at [REDACTED] which required Claimant to be on her feet all day.
13. Claimant has prior employment experience as a housekeeper and performing small factory work. Both jobs required lifting up to 50 lbs. and extended time walking/standing.
14. Claimant testified to the following limitations:

- Stand – 10 min.
  - No Walking – does not walk
  - No bend/stoop – joints ache
  - lift - 10 lbs.
15. Claimant performs household chores such as making the bed, washing the dishes and cleaning the tub after she gets out. Claimant does not do any vacuuming or dusting. Claimant relies on friends to do her grocery shopping, laundry, take the trash out and cut the grass.
16. The Department found that Claimant was not disabled and denied Claimant's application on 10/31/08.
17. Claimant filed a hearing request on January 21, 2009.
18. Medical records examined are as follows:

[REDACTED], in part (Exhibit B)

CURRENT DIAGNOSES: DJD, Rt. Knee effusion, Asthma, Compliance Issues, Schizoaffective Disorder

GENERAL: Moderately dressed and groomed. States increased pain levels 2<sup>nd</sup> to arthritis

CARDIOVASCULAR: RRR without murmur or gallop. No DVT

MUSCULOSKELTAL: Arthritis (DJD) – R knee effusion – Increased joint pain levels

MENTAL: Problems with mood & affect. Memory problems – schitzoaffective disorder

PHYSICAL LIMITATIONS: lifting less that 10 lbs frequently, up to 25 lbs. occasionally; stand/walk at least 2 hrs in an 8 hour work day, no fine manipulating with hands, no operating foot/leg controls with left foot.

MENTAL LIMITATIONS: Sustained concentration, memory, social interaction

[REDACTED] in part (Exhibit A, pp. 1-14)

ADMISSION: acute pancreatitis secondary to alcoholism.

TESTING: CAT scan of abdomen and pelvis which were negative. Complete metabolic CBC, lytes, BUN and creatinine.

DISCHARGE DIAGNOSES: Lower abdominal pain, pancreatic, urinary tract infection, hypertension, gastroesophageal reflux disease.

Beaumont Hospital, 8/3/08 – 8/11/08, in part (Exhibit 1, pp. 37-80)

DISCHARGE DIAGNOSES: Acute abdominal pain, uterine fibroids, vaginal bleeding, anemia due to chronic blood loss, asthma exacerbation, chronic low back pain, osteoarthritis

TREATMENT: inhaled and IV steroids plus bronchodilators. Hysterectomy.

 in part (Exhibit 1, pp. 81

COMPLAINTS: progressive shortness of breath and abdominal pain

DISCHARGE DIAGNOSES: Asthma acute exacerbation, uterine fibroids, Anemia due to chronic blood loss, nicotine dependence disorder.

Lower extremity Venous Duplex Bilateral, 7/21/08, in part (Exhibit 1, p. 132)

No evidence of deep venous thrombosis in either lower extremity.

Stress Echo Cardiogram, 7/22/08, in part (Exhibit 1, p. 133)

Normal dobutamine stress echocardiogram study.

Chest X-ray, 7/19/08, (Exhibit 1, p. 120)

Normal appearance of cardiac silhouette. The lungs are clear and there is no pleural effusion or pneumothorax.

Ultrasound Pelvic, 6/4/08 (Exhibit 1, p. 122)

Presence of an enlarged fibroid uterus unchanged from before.

Ultrasound Pelvic, 5/19/08 (Exhibit 1, p. 124)

There are fibroid changes of the uterus.

[REDACTED], in part (Exhibit 1, pp. 18-36)

COMPLAINTS: vaginal bleeding, fatigue, weakness, abnormal bleeding and some dizziness

DX: Excessive/frequent menstruation, leiomyoma of the uterus, backache, sickle-cell trait.

TREATMENT: Blood transfusion

#### 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). 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 in 2002. 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 (6<sup>th</sup> 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 (6<sup>th</sup> Cir. 1988); *Farris v Sec’y of Health & Human Servs*, 773 F.2d 85, 90 (6<sup>th</sup> Cir. 1985).

In this case, the Claimant has presented medical evidence from medical providers showing diagnoses of asthma, degenerative disc disease, knee effusion, and schizoaffective disorder. Claimant is also under physical restrictions placed on her by her physician. Therefore, 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.

Claimant’s medical records also show significant treatment for fibroids, prior to the date of application for MA benefits, including several hospitalizations for stomach pain, bleeding and anemia. Claimant underwent a hysterectomy in August of 2008 which seems to have alleviated

the symptoms associated with the fibroids. Therefore, Claimant's fibroid treatment is not considered in this decision.

### **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*, 12.03 *Schizophrenic, Paranoid and Other Psychotic Disorders* and 12.04 *Affective 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 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 undersigned did not find Claimant's testimony credible. Claimant's complaints of pain were vague and it was difficult to determine what pain Claimant believed was causing her limitation. However, Dr. White also placed Claimant on physical limitations. Based on his Medical Examination Report, the undersigned has determined that Claimant has restrictions of lifting 10 lbs. frequently, lifting up to 25 pounds occasionally and is limited to at least 2 hours/day in walking and standing.

Claimant's prior employment, based on her testimony of her job duties would have been considered unskilled and medium in exertional level as it required lifting and walking/standing a significant portion of the 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. 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-three 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, 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 201.10.

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 9/17/08, inclusive of retroactive benefits to July 2008.

Therefore the department is ORDERED to initiate a review of the application of September 17, 2008, 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 2010.

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

Date Signed: 05/05/09

Date Mailed: 05/06/09

**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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