

[REDACTED]

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.: 2009-1445
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
December 15, 2008
Wayne County DHS (19)

ADMINISTRATIVE LAW JUDGE: Judith Ralston Ellison

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, the Claimant appeared at a hearing held on December 15, 2008 at the Department of Human Service (Department) in Wayne County.

The closing date was waived. Additional medical records were obtained and reviewed by the State Hearing Review Team (SHRT). SHRT denied the applications. The matter is now before the undersigned for final decision.

ISSUES

Whether the Department properly determined the Claimant is "not disabled" for purposes of Medical Assistance based on disability (MA-P), and retroactive MA-P for the month of March 2008 and State Disability Assistance (SDA) programs?

FINDINGS OF FACT

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

- (1) On May 15, 2008 the Claimant applied for MA-P and SDA.
- (2) On June 16, 2008 the Department denied the application; and on March 5, 2009 the SHRT guided by Vocational Rule 202.20 denied the application because medical records support the ability to perform light work.
- (3) On September 4, 2008 the Claimant filed a timely hearing request to protest the Department's determination.
- (4) Claimant's date of birth is [REDACTED] and the Claimant is forty-eight years of age.
- (5) Claimant completed grade 12; and can read and write English and perform basic math.
- (6) Claimant last worked in March 2008 at a party store and prior work was retail grocery and convenience stores for 15 years.
- (7) Claimant has alleged a medical history of heavy uterine bleeding on a monthly basis with a hospitalization and resulting in anemia.
- (8) February, March, April and May 2008, in part:

February: DISCHARGE DIAGNOSES: Dysfunctional uterine bleeding (DUB).

To ER with DUB, fibroids, cramping and anemia. Hgb 7.9. Physical Examination: [Within normal limits.] Except mildly pale mucosa. Ultra sound transvaginal: IMPRESSION: Thickened endometrium. Primary diagnostic considerations are endometrial carcinoma or polyp or hyperplasia if history of hormone replacement. Left ovarian cyst. Possible dystrophic calcifications right ovary. F/U 4-6 weeks with ultrasound. Iron supplements Feosol prescribed. F/U with GYN clinic. [REDACTED]

March: F/U: Heavy vaginal bleeding for six weeks. Taking Feosol without problems. Low values: Hemoglobin 9.3; Hematocrit 29.3; MCV 71.3. Prothrombin time and INR: normal.

May: Hemoglobin 8.3.

May: CURRENT DIAGNOSIS: DUB, anemia—iron deficiency caused by DUB.

HT 67", WT 175, BP 114/72.

NORMAL EXAMINATION AREAS: General; Respiratory; Cardiovascular, Abdominal, Musculoskeletal, Neuro, Mental.

FINDINGS: HEENT: pale oral mucosa and nail beds. Hgb in February 2008: 7.9.

CLINICAL IMPRESSION: Deteriorating. Temporary disability no work until bleeding stops.

PHYSICAL LIMITATIONS: Limited, expected to last 12 months or more; Lifting/carrying less than 10 pounds 1/3 of 8 hour day; never 10 pounds or over; Sit about 6 hours in 8-hour day; no assistive devices are needed; no use of either hand/arms for simple grasping, reaching, fine manipulating, pushing/pulling; no use of either feet/legs for operating controls. Findings supporting limitations: fatigue from bleeding/anemia prevent strength for repetitive actions of work.

MENTAL LIMITATIONS: Limited in sustained concentration. Medications: Feosol. Can meet won needs in home. [REDACTED], [REDACTED]

(9) June 2008, in part:

Cytopathology Report: Squamous Intraepithelial Lesion (SIL) Low Grade. F/U pap screen in six months. [REDACTED] Claimant Exhibit.

(10) December 2008 and January 2009, in part:

December 2008: Hemoglobin 8.6. Increase iron supplement. [REDACTED], [REDACTED]

January 2009: HISTORY: depression and no longer on medications since late 80s. DUB and being followed by her gynecologist for this. Taking Iron pills.

PHYSICAL EXAMINATION: Well developed, well nourished, alert, orientated, no acute distress, dressed appropriately. Vial Signs: HT 58", WT 165 pounds, BP 110/70, Visual acuity without glasses 20/20 right, 20/25 left. HEENT, Respiratory, Cardiovascular, Skin, Bones & Joints, Neurological: [All within

normal limits.] Except: minimal lower quadrant abdominal discomfort left over right.

Lab results: Hemoglobin 10.7 of range 11.2-16.0. MCH 23.0 of range 26.0-33.0. Based on this exam: She is able to occasionally lift and carry 15-20 pounds, stand or walk for four hours in 8 hour day; and sit for six hours in 8 hour day. Able to do simple grasping, reaching, pushing/pulling, and fine manipulation; and operate foot/leg controls. [REDACTED]

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.

First, the trier of fact must determine if the individual is working and if the work is SGA. 20 CFR 416.920(b) In this case, under the first step, Claimant testified to not earning wages at SGA since March 2008. Therefore, the Claimant is not disqualified from MA at step one in the evaluation process.

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 F2d 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 F2d 860, 862 (6th Cir. 1988); *Farris v Sec'y of Health & Human Servs*, 773 F2d 85, 90 (6thCir 1985).

In this case, the Claimant has presented sufficient medical evidence to support a finding that Claimant has more than minimal physical limitations due to anemia causing fatigue. See finding of facts 8-10. The impairments have lasted 12 months.

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 impairments 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 (Listing) discusses the analysis and criteria necessary to a finding of a listed impairment. Listing 7.00A *Hematological Disorders* provides:

[A]n impairment caused by anemia should be evaluated according to the ability of the individual to adjust to the reduced oxygen carry capacity of the blood. A gradual reduction in red cell mass, even to very low values, is often well tolerated in individuals with a healthy cardiovascular system.

Under Listing 7.02 the Claimant does not meet the criteria because although the anemia has lasted over three months, there were no medical records indicating that she has had any blood transfusions; and according to the medical records, her cardiovascular system is healthy. The medical records did not establish any other impairment, although the Claimant has stated she has depression; and [REDACTED] finds limits in sustained concentration. The Claimant does not have established medical records history of treatment for mental impairments. The Claimant

testified to independence in ADLs and occasional driving which requires sustained concentration.

In this case, this Administrative Law Judge finds the Claimant is not disabled at the third step for purposes of the Medical Assistance (MA) program. Sequential evaluation under step four or five is necessary. 20 CFR 416.905

In the fourth step of the sequential evaluation of a disability claim, the trier of fact must determine if the Claimant's impairment(s) prevents Claimant 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. See 20 CFR 416.945.

Claimant's past relevant work was retail sales in party, grocery and convenience stores. The Claimant testifies to uterine bleeding for two weeks once a month. [REDACTED] opines to the Claimant's a physical ability to perform at least sedentary work; and the Claimant's hemoglobin is rising to near normal as of January 2009 while taking iron supplements. See finding of fact 10. Based on the Claimant's testimony, the undersigned decides the Claimant cannot return to past relevant 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 NW2d 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 functionally limited by impairments to sedentary work.

The Claimant is evaluated under Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines:

20 CFR 416.967(a), *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 forty-eight is considered a *younger individual*; a category of individuals in age group 45-49 when age is a lesser advantage factor for making adjustment to other work; Rule 201.21; education: high school graduate or more; previous work experience: skilled or semiskilled—skills not transferable; Claimant is “not disabled” per Rule 201.21.

It is the finding of the undersigned, based upon the medical data and hearing record that Claimant is “not disabled” at the fifth step.

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 insufficient evidence to support a finding that Claimant's impairments meet the disability requirements under SSI disability standards or prevent other sedentary work for ninety days. This Administrative Law Judge finds the Claimant is "not disabled" for purposes of the SDA program.

DECISION AND ORDER

The Administrative Law Judge, based on the findings of fact and conclusions of law, decides that the Claimant is "not disabled" for purposes of the Medical Assistance program, retroactive Medical Assistance Program and State Disability Assistance.

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

/s/
Judith Ralston Ellison
Administrative Law Judge
For Ishmael Ahmed, Director
Department of Human Services

Date Signed: [REDACTED] _____

Date Mailed: [REDACTED] _____

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 receipt 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.

JRE/jlg

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