

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: 2009-14948

Issue No: 4031, 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 14, 2009

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

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 filed on May 16, 2008. After due notice, a hearing was held on May 14, 2009. The Claimant appeared by telephone and testified. Claimant was represented by [REDACTED]. Betty McBride, FIM appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA") and State Disability Assistance ("SDA") programs.

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 applied for SDA and MA as of May 16, 2008. Claimant applied for retroactive benefits to February, 2008
2. Claimant is 5'9" tall and weighs 200 pounds.

3. Claimant is right handed.
4. Claimant is 37 years of age.
5. Claimant's impairments have been medically diagnosed as left leg amputation, blood clot on spleen, high blood pressure, arterial occlusive disease, and diabetes.
6. Claimant's physical symptoms are pain and numbness in left leg and difficulty standing.
7. Claimant takes the following prescriptions:
 - a) Lovanox – blood thinner by injection
 - b) Coumadin
 - c) Lopressor – blood pressure medication
 - d) Lisinopril
 - e) Roarix
 - f) Folic acid
 - g) Multivitamin
8. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
9. Claimant has an 11th grade education.
10. Claimant is able to read/write/perform basic math skills.
11. Claimant last worked in August of 2007 as production worker. Claimant lifted 5 lbs off the line. The job required standing. All of Claimant's previous work has involved production.
12. RFC:
 - Sitting: 3-4 hours
 - Standing: Not really
 - Walking: Cl uses a wheelchair since returned from hospital
 - Bend/stoop: No
 - Lifting: 5 lbs. (no restrictions)
 - Grip/grasp: No problems
13. Claimant gets help with personal care such as grooming, taking a shower, washing and getting dressed because Claimant's balance is not good. Claimant's niece does her hair. Claimant is able to wash dishes standing for about a ½ hour. Claimant only goes out shopping with her niece.
14. Claimant uses a wheelchair.

15. The Department found that Claimant was not disabled and denied Claimant's application on 11/5/08.

16. Medical records examined are as follows:

██████████ Hospital Admission, (Exhibit 1, pp. 69-80)

Patient underwent 2 revascularization surgeries of the left lower leg on ██████████ and ██████████. The first included extensive embolectomies of the left common and internal iliac as well as femoral and popliteal vessels. The second surgery involved a left tibial artery repair with Bovine patch and infusion of a thrombolytic.

██████████ Hospital Admission, (Exhibit 1, p. 8-13)

Below the knee amputation of left lower extremity secondary to embolus to left common iliac artery and left popliteal artery. Prior history of deep vein thrombosis with thrombectomy. Transferred to inpatient rehabilitation center.

██████████ Hospital inpatient rehabilitation, (Exhibit 1, p. 14-53, 81-94)

Physical therapy and occupational therapy. Patient fitted for prosthesis

██████████ Hospital Admission, (Exhibit 1, pp. 95)

Admitted to regular medical floor following surgical debridement and secondary closure of wound at amputation site.

██████████ physician follow up (Exhibit 2)

Follow up after debridement of stump for non healing wound. Pt is to get a temporary prosthesis tomorrow and seen back in six weeks for final wound check.

██████████ – Hospital Admission (Exhibit A, pp. 1-3)

Pt with below-the-knee amputation from gangrene secondary to blood clots, hypertension and anemia, came in because of swelling, chest pain and drainage from her left leg below the knee.

DX: Left stump abscess, hyperhomocystinemia, hypertension, Microcytic hypochromic anemia

- Transferred to continue for wound VAC placement

██████████ – Hospital Admission (Exhibit A, pp. 4-5)

Pt complaining of sudden onset of shortness of breath associated with chest pain that started 1 day ago.

DX: Acute pulmonary embolism

 Hospital Admission (Exhibit A, pp. 6-8)

Pt presented with sudden onset 10/10 epigastric pain. The patient knows that she is supposed to take Coumadin, but because she is financially challenged and without insurance issue, so she was unable to take any Coumadin for her status.

CT scan showed area of fluid attenuation present within spleen. It could represent an area of ischemia or infarction.

DX: Splenic infarctions secondary to hypercoagulable status of unknown etiology.

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 CFR 416.905.

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 in 2005. 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 the subject case, Claimant last worked in 2007. 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 showing a diagnosis of amputation of the left leg, blood clot on spleen, hypertension, arterial occlusive disease, and diabetes. Claimant testified to physical limitations in terms of sitting, standing, walking and lifting.

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. After reviewing the criteria of listings 4.12 *Peripheral arterial disease* and 1.05 *Amputation (due to any cause)*, the undersigned finds the Claimant's medical records do not substantiate that the Claimant's mental impairments meet or are medically equivalent to the listing requirements. 20 CFR 404, Appendix 1 to Subpart P, § 4.00G describes how the limitations from Peripheral Vascular Diseases (PVD) are assessed:

We will assess your limitations based on your symptoms together with physical findings, Doppler studies, other appropriate non-invasive studies, or angiographic findings. However, if the PVD has resulted in amputation, we will evaluate any limitation related to the amputation under the musculoskeletal listings, 1.00(f).

1.05 *Amputation* was then reviewed which states as follows:

One or both lower extremities at or above the tarsal region, with stump complications resulting in medical inability to use a prosthetic device to ambulate effectively, as defined in 1.00B2b, which have lasted or are expected to last for at least 12 months.

20 CFR 404, Appendix 1, Subpart P, Rule 1.05(B).

In this case, Claimant has been using a wheelchair for the past year and a half, but her doctor indicated that she was ready to be fitted for a prosthesis in May of 2008. The 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 one can do in a work setting. RFC is the most one can still do despite limitations. All the relevant medical and other evidence in the case record applies in the assessment.

Claimant has presented medical evidence supporting a diagnosis of left leg amputation due secondary to blood clots, blood clots on spleen, hypertension, arterial occlusive disease and diabetes. Claimant testified that she is unable to stand for any period of time and has been using a wheelchair for the past year and a half. Claimant's prior employment includes production work – jobs that are considered unskilled and light in exertional level as Claimant was required to stand. Given Claimant's inability to stand on her own and balance issues, the undersigned finds the Claimant currently limited to sedentary work. Claimant is, therefore, unable to return to past relevant work in any of the above listing 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 functionally at the level of sedentary work. Sedentary work is described as follows:

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.

20 CFR 416.967(a). Claimant is extremely limited in her standing and walking. Therefore, Claimant would be limited to sedentary work. 20 CFR 416.967.

While Claimant is currently limited in her standing and walking, there is nothing to indicate that she is not able to wear a prosthesis. The federal 6th Circuit Court of Appeals, in *McKnight v Secretary of Health and Human Services*, 927 Fed. Rept. 2d. 241, Dec. 1990, decided that a decision regarding disability is to be made in the absence of medical treatment. If the person meets the medical disability standards, then a finding must be made as to whether or not affordable treatment is available to the person that would prevent the impairment from being severe under the regulations. The Administrative Law Judge finds that a prosthesis is not affordable treatment for someone with no income. Therefore, the analysis regarding Claimant’s residual functional capacity will continue.

Claimant at thirty-seven (37) is considered a *younger individual*; a category of individuals in age group 18-44. 20 CFR 404, Appendix 2 to Subpart P, Rule 201.20. Claimant's education is "limited or less – at least literate and able to communicate in English" and her previous work experience is unskilled. While generally, such an individual would be able to make a transition into sedentary work, there are exceptions:

Inability to engage in substantial gainful activity would be indicated where an individual who is restricted to sedentary work because of a severe medically determinable impairment lacks special skills or experience relevant to sedentary work, lacks educational qualifications relevant to most sedentary work (e.g., has a limited education or less) and the individual's age, though not necessarily advanced, is a factor which significantly limits vocational adaptability.

20 CFR 404, Appendix 2 to Subpart P, Rule 201.00(c). In the present case, Claimant has only an 11th grade education. Claimant also has cardio issues which have resulted in 10 hospital admissions comprising over 45 days in the hospital over the past two years from blood clots or complications from blood clots. Pursuant to SSR 96-8p, Claimant needs the residual functional capacity to perform work on a regular and continuing basis, 8 hours per day, 5 days per week. The extensive amount of hospital stays would prevent Claimant from working on a continuing and regular basis. Furthermore, based on Claimant's testimony, Claimant is unable to even take care of herself on her own. She requires help doing her hair, getting out shopping and even taking a shower.

This Administrative Law Judge finds that the Claimant's impairments and limitations have a major effect upon Claimant's ability to perform basic work activities. Claimant is unable to perform even the full range of activities for sedentary work as defined in 20 CFR 416.967(a) because of the nature of the limitations. The total impact caused by the combination of medical problems suffered by the Claimant must be considered. The combination of Claimant's

impairments results in a severe impairment which limits Claimant's ability to work. 20 CFR 404.1529. Therefore, it is the finding of the undersigned, based upon the medical data and hearing record that Claimant is "disabled" at the fifth step.

Finally, The Department has failed to provide vocational evidence which establishes that Claimant has the residual function capacity for substantial gainful activity and that, given Claimant's age, education and work experience, and physical limitations, there are significant numbers of jobs in the national economy which the Claimant could perform despite Claimant's limitations. Accordingly, the Administrative Law Judge concludes that Claimant is disabled for the purposes of the MA program.

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.

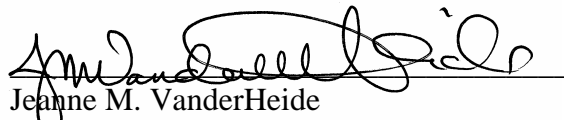
In this case, there is sufficient evidence to support a finding that Claimant's impairment is disabling her under SSI disability standards. This Administrative Law Judge finds the Claimant is "disabled" for purposes of the MA program.

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 and the State Disability Program effective February, 2008.

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

Accordingly, The Department is ORDERED to initiate a review of the May 16, 2008 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 November, 2010.


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

Date Signed: 12/11/09

Date Mailed: 12/11/09

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

2009-14948/JV

cc:

