

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: 2009-15541
Issue No: 4031, 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 3, 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 February 18, 2009. After due notice, a telephone hearing was held on July 15, 2009. The Claimant was present and testified along with her mother, [REDACTED]. Suzette Coklow, MCS 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 filed for SDA and MA on 10/21/08.
2. Claimant is 5'4" tall and weighs 170 pounds.
3. Claimant is right handed.

4. Claimant is 45 years of age.
5. Claimant's impairments have been medically diagnosed as right shoulder rotator cuff tear, bilateral impaction syndrome in wrists, depression, tendonitis in right shoulder/
6. Claimant's physical symptoms are aches and pains all through body and joints, worst in wrist, knees and lower back; knees give out; right hip pain, numbness and tingling in her hands; limping; difficulty gripping and grasping with hands, and night-time pain.
7. Claimant's mental symptoms are panic attacks (1x/month), anxiety attacks (a couple times/week), crying spells, sleep disturbances, weight gain, 20 lbs in past year, fatigue, and suicidal thoughts.

Claimant testified that she was hospitalized on [REDACTED] for a suicidal overdose.

8. Claimant testified that she is currently treating with the following medical providers:
 - [REDACTED] – psychiatrist (1x/month) – outpatient therapy
 - [REDACTED] – therapist 1x/week
 - [REDACTED] – fibromyalgia (xrays & blood work, PT)
 - [REDACTED] – internal medicine
 - Hemotologist
 - [REDACTED] – tennis elbow and right knee.
 - [REDACTED]

9. Claimant takes the following prescriptions (side effects):
 - a) Zymbalta – Depression and sleeping
 - b) Trazogone – Depression and sleeping
 - c) Altra 100 mg – pain
 - d) Ferous
 - e) Sulfate
 - f) Ferrtanyl patch – pain
 - g) Vicodin – pain
 - h) Dicolenace – pain and muscle relaxer
 - i) Trezacig – Muscle pain
 - j) Other Rx for skin from dermatologist has been happening for over a year.
 - k) Hydrox – for itching for allergies.
10. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
11. Claimant has a high school education and 30 hours at [REDACTED]. Claimant has certificate for cosmetology in Hair.

12. Claimant is able to read/write/perform basic math skills.
13. Claimant last worked July 27, 2008 at the post office as a mail processor. Claimant worked there since 1988 pushing, pulling, loading mail, processing and dispatching mail. Claimant was required to lift up to 5-15 lbs sacks of mail and push/pull 100 lbs of mail in hampers. The job required standing most of the day as well as bending and stooping.
14. Claimant has prior employment experience working on the line at [REDACTED] for four months standing. Claimant also previously worked as a cosmetologist cutting hair.
15. RFC:
 - Sitting: Cl can tolerate sitting w/ pillow
 - Standing: 1 hour
 - Walking: Walks with cane 100'
 - bend/stoop - no
 - Lifting: 7 lbs. Can lift a gallon of milk.
 - grip/grasp: Cl dops things.
16. Claimant performs household chores such as washing dishes, grocery shopping, and basic housecleaning.
17. Claimant uses a cane and arm brace prescribed by [REDACTED] and sometimes a back brace.
18. The Department found that Claimant was not disabled and denied Claimant's application on January 14, 2009.
19. Medical records examined are as follows:

[REDACTED] Internal Medicine IME Report (Exhibit A)

COMPLAINTS: Right shoulder pain (MRI revealed rotator cuff tear); right wrist (required casting and surgery with shaving of the ulna).

PHYSICAL EXAM: Movement of the right shoulder was limited. Uses a cane. Straight leg raising 25 degrees on right side. She has right hip pain. The right knee range of motion also limited.

IMPRESSION: Range of motion in right shoulder is reduced. The patient ambulated with a slight limp on the right side.

RESTRICTIONS: Work 8 hrs/day in seated position. Standing should be intermittent, ½ - 1 hour at a time. Lots of problems with her right upper extremity which will limit her ability to lift, carry, push or pull until resolution of ortho surgery done on wrist. Lifting is limited to 10 lbs or less and utilizing the left hand only. The claimant is unable to use bilateral hands for fine manipulations

at this time, secondary to the cast on the right wrist. The claimant has no limitation on climbing stairs, however the claimant has chronic pain in the left hip and reduced range of motion, so climbing ropes, ladders and scaffolding should be limited at this time.

██████████ Medical Exam Report (Dr. Specialty unknown) (Exhibit 1, pp. 12-13)

Deteriorating

PHYSICAL LIMITATIONS: No lifting/carrying and no sitting/standing, no grasping, reaching, pushing/pulling or fine manipulating

Psychiatric Exam Report and Mental RFC (first pages only provided) (Exhibit 1, pp. 14 & 15)

Markedly Limited as follows:

MENTAL RESIDUAL FUNCTION CAPACITY

ASSESSMENT: Markedly limited as follows:

1. The ability to remember locations and work like procedures
2. The ability to understand and remember detailed instructions.
3. The ability to carry out detailed instructions.
4. The ability to maintain attention and concentration for extended periods.
5. The ability to perform activities within a schedule, maintain regular attendance and be punctual with customary tolerances.
6. The ability to sustain an ordinary routine without supervision.
7. The ability to work in coordination with or proximity to others without being distracted by them.
8. The ability to work in coordination with or proximity to others without being distracted by them.
9. 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.

██████████ Hand Surgeon office notes (Exhibit 1, pp. 16-35)

COMPLAINTS: Numbness and tingling in hands, nighttime pain, pain in wrists

IMPRESSION: Bilateral impaction syndrome with associated 75% scapholunate and complete central triangular fibrocartilage complex tear.

TREATMENTS: [REDACTED] – steroid injection, wrist splint, therapy

RECOMMENDATION: Arthroscopy with debridement of torn ligaments and possible arthroscopic shortening of the ulna.

SURGERY: Performed [REDACTED]

[REDACTED] Psychiatric Evaluation (Exhibit 1, p. 36-39)

Patient presented to ER feeling overwhelmed and suicidal upon recommendation from therapist.

MENTAL STATUS EXAM: Patient is in poor hygiene and grooming. She is disheveled. Affect is depressed. Mood is sad. She is moving slowly, appears to be in pain. She is feeling helpless, hopeless. Cognitive functions are grossly intact. Intelligence is average. Insight and judgment is poor.

DX: Depression and chronic pain.

PROGNOSIS: Rather poor because of overwhelming psychosocial problems. It is to be noted that she gave away the legal guardianship of her 2 year old to her mother; she says she cannot take care of the kid anymore.

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 on [REDACTED]. 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 right rotator cuff tear, low back issues evidenced by a positive straight leg raise, bilateral impaction syndrome of wrists following right wrist surgery with casting and shaving of the ulna, and depression. Claimant testified to physical limitations in terms of sitting, standing, walking and lifting. Claimant's physicians and independent medical examiners have also placed her on physical limitations including no lifting over 10 lbs using left hand only.

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 1.01 *Major dysfunction of a joint* was 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 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 right rotator cuff tear, depression and bilateral impaction syndrome. Claimant's prior employment included working at the post office as a mail processor and working on the assembly line. Both are considered unskilled and light in exertional level. Claimant has been placed on lift/stand/walk physical limitations by her own doctor as well as an independent medical examiner. The undersigned finds the Claimant's physical limitations currently limit her 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). The Independent Medical Examiner recommended physical limitations dictating that Claimant is limited to lifting 10 lbs with her left hand only. Therefore, on physical limitations alone, Claimant would be limited to sedentary work. 20 CFR 416.967.

Claimant at forty-six 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. 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 his 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 also had mental as well as physical limitations. The psychiatric exam found claimant markedly limited in her ability to deal with detailed instructions, maintain attention and concentration and work in coordination or proximity with others.

This Administrative Law Judge finds that Claimant's impairments and limitations have a major effect upon Claimant's ability to perform basic work activities. This is based on Claimant being able to lift only 10 lbs occasionally with one hand; Claimant's prescribed cane use and limp while walking; Claimant's limitations with fine manipulation, gripping and grasping; Claimant's fatigue from disturbed sleep and lack of pain; Claimant's chronic pain; and

Claimant's mental capacity. The undersigned finds that 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 physical and mental 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.

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 impairments are disabling her under SSI disability standards. This Administrative Law Judge finds the Claimant is "disabled" for purposes of the MA program.

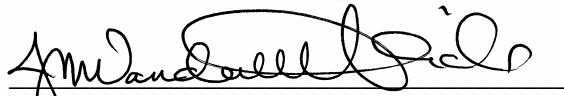
DECISION AND ORDER

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.

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

Accordingly, The Department is ORDERED to initiate a review of the 10/21/08 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 January, 2011.



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

Date Signed: 12/10/09

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

cc:

