

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: 2009-16024
Issue No: 2009, 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 10, 2009
Macomb 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 the Claimant's request for hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan on July 20, 2009. At the hearing, the Claimant was present and testified. Constance Wasilef, MCW, 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 and State Disability Assistance ("SDA") 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 SDA and MA on 9/18/08. Claimant requested MA and SDA retroactive to 6/08.
2. Claimant is 5'1" tall and weighs 145 pounds.

3. Claimant is right handed.
4. Claimant is 41 years of age.
5. Claimant's impairments have been medically diagnosed as chronic depression, fibromyalgia, arthritis, and chronic fatigue syndrome.
6. Claimant's physical symptoms are inflammation in hand and feet, nodules on hands, toes and calves, pain in neck, shoulder, back, feet and knees, cannot make a fist, toes do not bend, extremely painful if Claimant touches anything with toes or hands, Claimant cannot open doors.
7. The case worker testified at the hearing that Claimant's hands looked swollen and nodules were protruding.
8. Claimant's mental symptoms are forgetfulness, concentration problems, anxiety attacks, crying spells – 2x/week, confusion, fear/anger/frustration, (gets annoyed very easily), sleep disturbances – every night (Claimant sleeps 2 hours at a time. The rest is sleeping and waking constantly), fatigue, and suicidal thoughts.
9. Claimant takes the following prescription medication.
 1. Relafen 500 mg (Relafen causes cl to just fall asleep. Cl takes it for really bad pain – 4-5x/week)
 2. Navumetone 500 mg 2x/day
 3. water pill HCl
 4. HTP5 – over the counter, Balances serotonin in brain
 5. Cyslamend – 2x/day for pain
 6. Triple Flex for the joints
 7. Tylenol PM to sleep
 8. Tylenol Arthritis
10. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
11. Claimant has a 10th grade education. No GED.
12. Claimant is able to read write perform basic math skills.
13. Claimant last worked two years ago at [REDACTED] for 3-4 months, retail sales and stocking. The physical activity involved – picking up boxes, 15 lbs. Claimant left this position because the pain in her hands worsened.
14. Claimant has prior employment experience performing secretarial work for her husband – writing estimates & proposals for electrician. No standing, bending/stooping. Claimant is no longer with husband.
15. Claimant reported the following physical limitations:

- Sitting: ½ hour
 - Stand: 20 min
 - Walk: Not even a block and limping.
 - bend/stoop: pain is always in back – extreme pain in lower back. T shoulder blade hurts a lot. Points on spine that hurt randomly.
 - Lift – cannot lift with her hands. Envelope – no. Gallon of milk – no. Cannot open anything either.
 - grip/grasp – drops things constantly.
16. Claimant performs household chores such as washing dishes one or two at a time. Claimant does laundry and can make the bed.
17. Claimant wears wrist braces that she puts on hand recommended by her doctor, 1-2x/week.
18. The Department found that Claimant was not disabled and denied Claimant's application on 12/19/08.
19. Medical records examined are as follows:

██████████ Psychological Independent Medical Exam (Exhibit 2)

COMPLAINTS: Chronic pain from arthritis

DAILY ACTIVITIES/FUNCTIONAL LEVELS: CI does need help with some fine motor tasks such as buttoning and zipping. Sleep is disturbed by chronic pain and she states that she sleeps typically two or three hours a night and rests during the day.

GENERAL OBSERVATIONS: Gait was slow and slightly awkward due to swelling in feet and hands.

MEDICAL SOURCE STATEMENT: The patient evidences symptoms of a mild depression secondary to her chronic pain issues and medical impairments. Concentration and attention and remote memory are intact such that she should be able to do simple unskilled tasks.

██████████ IME Emergency Medical (Exhibit 1, pp. 3-11)

HISTORY OF PRESENT ILLNESS: History of chronic depression. Chronic pain as well as fatigue and chronic fatigue syndrome, diagnosed in ██████████. Arthritis and pain in hands, elbows and back. Pain in all joints. She has difficulty stooping, squatting and bending over.

PYSCHIATRIC HISTORY: Positive for mild depression and anxiety. The examinee states she has mood swings, anger, crying spells, sadness, and suicidal thoughts. Taking 5 HTP (over the counter nutritional)

PHYSICAL EXAMINATION: CI has nodules at the metatarsal phalangeal joints bilaterally.

IMPRESSION: depression and arthritis

MEDICAL SOURCE STATEMENT: Based upon the exam today, the examinee is able to occasionally lift 15 lbs. She is able to stand or walk about four hours in an eight hour day. She is able to sit about six hours in an eight hour day. She is able to use her upper extremities for simple grasping, reaching, pushing, pulling and fine manipulation. She is able to operate foot and leg controls occasionally. She does need further evaluation for her history of depression.

██████████ Medical Exam Report Internist (Exhibit 1, pp. 17-18)

CURRENT DX: Fibromyalgia

PHYSICAL LIMITATIONS:

- Lifting less than 10 lbs occasionally
- Stand/walk less than 2 hours in 8 hour day
- No reaching, pushing/pulling, or fine manipulating
- No foot/leg controls

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 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 of depression, fibromyalgia, arthritis and chronic fatigue syndrome. The medical evidence has established that Claimant has a physical impairment that has more than a minimal effect on basic work activities; and Claimant’s impairments are expected to last continuously for more than twelve months.

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 (Listing) discusses the analysis and criteria necessary to a finding of a listed impairment. The Listings under 12.01 – Mental Impairments and 1.01 Musculoskeletal Impairments were reviewed. In this matter, the medical records establish a diagnosis chronic fatigue syndrome, fibromyalgia and depression. 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 impairment does not meet the intent or severity of the listings.

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's previous employment as a retail stocker would be classified as unskilled, light work. Light work requires lifting up to 20 lbs. and a good deal of walking or standing. Claimant's previous experience writing estimates and proposals for an electrician would be classified as semi-skilled, sedentary work. Claimant's physician indicated that she was only able to lift less than 10 lbs occasionally and stand/walk less than 2 hours in an 8 hour day, plus no reaching, pushing, pulling or fine manipulating. These limitations would limit Claimant to

sedentary type work. As Claimant is currently capable of doing only sedentary work, 20 CFR 416.967, this Administrative Law Judge finds that Claimant is not able to perform some of her past work. However, without consideration of her mental impairments, Claimant would be able to perform her previous work of writing electrical estimates. The question remains then whether the Claimant's mental impairments further limit her ability to perform work.

The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and to make appropriate mental adjustments, if a mental disability is being alleged, 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908 and 20 CFR 416.929.

In determining an individual's Mental Residual Functional Capacity, the trier of fact must also look at what mental capacity is required for the different skill levels of work as follows:

1. Unskilled work needs little or no judgment to do simple duties;
2. Semiskilled work may involve detailed, but not more complex, duties and may require alertness and close attention.
3. Skilled work requires use of judgment or dealing with people, facts, figures or ideas at a high level of complexity.

20 CFR 416.968. The Independent Psychologist indicated that Claimant is suffering from mild depression secondary to pain issues. He went on to indicate that "concentration and attention and remote memory are intact such that she should be able to do simple unskilled tasks." Therefore, Claimant would be incapable of doing her past work of writing estimates as that work was semi-skilled. Claimant is limited to sedentary, unskilled work.

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 limited to sedentary work, unskilled work based. 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 forty-one is considered a *younger individual*; a category of individuals in age group under age 45 where age is a more advantageous factor for making an adjustment to other work. It is usually not a significant factor in limiting such individuals' ability to make an adjustment to other work, including an adjustment to unskilled sedentary work, even when the individuals are unable to communicate in English or are illiterate in English. 20 CFR 416.967(a), Rule 201(h)(2). "However, a decision of "disabled" may be appropriate for some

individuals under age 45 who do not have the ability to perform a full range of sedentary work.”
Id. at Rule 201(h)(3).

In this case, Claimant’s education is limited to the 10th grade. In addition to the limitations listed above, Claimant has visible swelling in her hands and feet. The swelling limits Claimant’s ability to perform fine motor skills and limits her gait when walking. For example, Claimant needs help with tasks such as buttoning and zipping. The Administrative Law Judge finds that the combination of Claimant’s limitations to sedentary work due to physical and mental limitations along with the swelling in her hands and feet precludes Claimant from working in any capacity.

In addition, 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, 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. 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

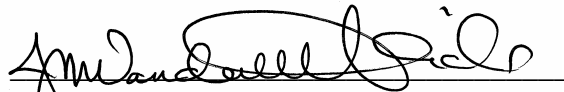
of MA benefits based on disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in PEM 261.

In this case, there is sufficient evidence to support a finding that Claimant's 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 9/18/08 including retroactive benefits to June, 2008.

Therefore, the department is ordered to initiate a review of the application of September 18, 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 in August, 2010.



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

Date Signed: 09/28/09

Date Mailed: 09/29/09

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:

