

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.: 2009-17714

Issue No.: 2009/4031

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

June 11, 2009

Wayne County DHS (73)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

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 a hearing. After due notice, a hearing was held in Detroit, Michigan on Thursday, June 11, 2009. The Claimant appeared and testified, along with [REDACTED]. The Claimant was represented by [REDACTED] of [REDACTED]. [REDACTED]. [REDACTED] appeared on behalf of the Department.

During the hearing, the Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical documentation. The additional records were received, reviewed, and entered as Exhibit 5. This matter is now before the undersigned for a final determination.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA-P") and State Disability Assistance ("SDA") benefit 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. The Claimant submitted a public assistance application seeking MA-P, retroactive for August 2009, and SDA benefits on September 29, 2008.
2. On December 1, 2008, the Medical Review Team (“MRT”) determined the Claimant was not disabled. (Exhibit 1, pp. 5, 6)
3. On December 3, 2008, the Department sent an eligibility notice to the Claimant informing her that she was not eligible for MA-P and SDA benefits. (Exhibit 1, p. 3)
4. On February 23, 2009, the Department received the Claimant’s Request for Hearing protesting the disability determination.
5. On February 24th and April 28, 2009, the State Hearing Review Team (“SHRT”) found the Claimant not disabled. (Exhibits 2, 3)
6. The Claimant’s alleged physical disabling impairments are due to shoulder/neck/hand/knee pain, arthritis, chronic obstructive pulmonay disease (“COPD”), and hypertension.
7. The Claimant has not alleged any mental disabling impairment.
8. At the time of hearing, the Claimant was 55 years old with a [REDACTED] birth date; was 5’ 4 ¾” in height; and weighed 200 pounds.
9. The Claimant has a limited education with an employment history as a home and day care provider.
10. The Claimant’s impairment(s) has lasted, or is expected to last, continuously for a period of at least 12 months.

CONCLUSIONS OF LAW

The Medical Assistance (“MA”) program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services (“DHS”), formerly known as the Family Independence Agency, pursuant to MCL 400.10 *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”).

Disability is defined as 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(a) 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 make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913 An individual’s subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a) Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant’s pain; (2) the type/dosage/effectiveness/side effects of any medication the applicants takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and

(4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3) The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2)

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1) The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4) If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4) If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945 Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1) An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4) In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv)

In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a) An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a) As outlined above, the first step looks at the individual's current work activity. An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a)(4)(i) The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6)

As previously stated, the first step looks at the individual's current work activity. An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a)(4)(i) In the record presented, the Claimant is not involved in substantial gainful activity therefore is not disqualified from receipt of disability benefits under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b) An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c) Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b) 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.

Id. The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985) An impairment qualifies as severe only if, regardless of a claimant's age, education, or work experience, the impairment would affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985)

In the present case, the Claimant alleges disability due to shoulder/neck/hand/knee pain, arthritis, chronic obstructive pulmonay disease ("COPD"), and hypertension. In support of her claim, medical records from 2007 were submitted which document treatment for left foot numbness.

On [REDACTED], the Claimant was admitted to the hospital with complaints of shortness of breath and severe cough. Left shoulder x-rays revealed some degenerative changes at the AC joint. Chest x-rays revealed mild cardiomegaly. A hiatal hernia was found on the CT scan. The Claimant was discharged on [REDACTED] [REDACTED] with the diagnoses of obstructive chronic bronchitis with acute bronchitis, candidiasis of mouth, anemia, esophageal reflux, hernia, hypertension, and shoulder joint pain.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were hypertension, COPD, degenerative disc disease, pelvic mass, GERD, and obesity. The Claimant's condition was deteriorating and she was limited to occasionally lift/carry 10 pounds and able to perform repetitive actions with all extremities with the exception of pushing and pulling.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The Claimant was found able to occasionally lift/carry 10 pounds; stand and/or walk less than 2 hours in an 8 hour workday; sit about 6 hours during this same time period; and was able to perform repetitive action with her right hand/arm.

On [REDACTED], the Claimant attended an independent medical evaluation. The physical examination revealed a normal gait with no sensory or motor deficits in the lower extremities. Scattered rhonchi and crepitations were documented all over the lung fields. Decreased range of motion was noted in the cervical/lumbar spine and shoulders. The Pulmonary Function Test showed the Forced Vital Capacity ("FVC") of 1.6 and the Forced Expiratory Volume at 1 ("FEV₁") of 1.34 and confirmed the Claimant's COPD. Ten minutes after the Bronchodilator, the FVC was 2.06 and the FEV₁ was 1.83. The Claimant was also found to have cervical radiculopathy and hypertension. Although the Claimant was found to have normal functioning of her hands/feet, the physician opined that it would be difficult for the Claimant to perform any physical work of any type.

On this same date, a Medical Examination Report was completed on behalf of the Claimant. The Claimant's condition was listed as deteriorating and she was limited to occasionally lift/carry 10 pounds; stand and/or walk less than 2 hours in an 8 hour workday; sit

less than 6 hours during this same time period. The Claimant was able to perform repetitive actions with her extremities.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented objective medical evidence establishing that she does have physical limitations on her ability to perform basic work activities. Accordingly, the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Claimant asserts physical disabling impairment(s) due to shoulder/neck/hand/knee pain, arthritis, chronic obstructive pulmonary disease ("COPD"), and hypertension.

In consideration of the Claimant's objective medical evidence, Listings 1.00 (musculoskeletal system impairments), 3.00 (respiratory system impairments), 4.00 (cardiovascular impairments), and 14.00 (immune system disorders) were reviewed and considered. Ultimately, it is found that the Claimant's objective medical evidence is insufficient to meet the intent and severity requirement of a listed impairment. Accordingly, the Claimant cannot be found disabled, or not disabled, at Step 3. Accordingly, the Claimant's eligibility under Step 4 is considered. 20 CFR 416.905(a)

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv)

An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3) Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1) Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3) RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967 Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a) 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. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b) Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.* Medium work involves lifting no more than 50

pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c) An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d) An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e) An individual capable of very heavy work is able to perform work under all categories. *Id.*

Over the past 15 years, the Claimant worked as a day and home care provider with a short period as a stock person. The primary job duties included preparing meals and grooming. The Claimant was required to stand, walk, bend, squat, and lift/carry approximately 10 pounds. In light of the Claimant's testimony and in consideration of the Occupational Code, the Claimant's prior employment is classified as unskilled, light work.

The Claimant testified that she experiences difficulty lifting/carrying minimal weight; can stand for 10 minutes; can walk short distances but has shortness of breath; can sit for about ½ hour; and is unable to fully bend and/or squat due to pain. The medical documentation limitations note similar restrictions. If the impairment or combination of impairments does not limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. 20 CFR 416.920 In consideration of the Claimant's testimony, medical records, and current limitations, it is found that the Claimant is not able to return to past relevant work thus the fifth step in the sequential evaluation is required.

In Step 5, an assessment of the individual's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work

can be made. 20 CFR 416.920(4)(v) At the time of hearing, the Claimant was 55 years old thus considered to be of advanced age for MA-P purposes. The Claimant also has a limited education. Disability is found disabled if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from the Claimant to the Department to present proof that the Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983). Transferability of skills is most probable and meaningful among jobs in which the same or a lesser degree of skill is required; the same or similar tools and machines are used; and the same or similar raw materials, products, processes, or services are involved. 20 CFR 416.968(d)(2) A person of advanced age who has a severe impairment(s) that limits the individual to light or sedentary work are generally unable to adjust to other work unless the acquired skills are transferable to skilled or semi-skilled work or if the individual has recently completed education that provides for direct entry into skilled or semi-skilled work despite the impairment(s). 416.968(d)(4)

In the record presented, the total impact caused by the combination of medical problems suffered by the Claimant must be considered. In doing so, it is found that the combination of the Claimant's physical impairments have a major effect on her ability to perform basic work

activities however the Claimant may be able to perform the full range of activities for sedentary work as defined in 20 CFR 416.967(a). Ultimately, after review of the entire record and in consideration of the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II], specifically Rule 201.01, it is found that the Claimant is disabled for purposes of the MA-P program at Step 5

The State Disability Assistance (“SDA”) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10 et seq. and Michigan Administrative Code (“MAC R”) 400.3151 – 400.3180. Department policies are found in PAM, PEM, and PRM. A person is considered disabled for SDA purposes 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.

In this case, the Claimant is found disabled for purposes of the Medical Assistance (“MA-P”) program, therefore the Claimant’s is found disabled for purposes of SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above finds of facts and conclusions of law, finds the Claimant disabled for purposes of the Medical Assistance and State Disability Assistance programs.

Accordingly, it is ORDERED:

1. The Department’s determination is REVERSED.
2. The Department shall initiate review of the September 29, 2008 application to determine if all other non-medical criteria are met and inform the Claimant and her representative of the determination.

3. The Department shall supplement for any lost benefits the Claimant was entitled to receive if otherwise eligible and qualified in accordance with department policy.
4. The Department shall review the Claimant's continued eligibility in accordance department policy in March 2011.

Colleen M. Mamelka

Colleen M. Mamelka
Administrative Law Judge
For Ishmael Ahmed, Director
Department of Human Services

Date Signed: 2/02/2010

Date Mailed: 2/02/2010

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 the Circuit 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.

CMM/jlg

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