

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: 2009-18363

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 4, 2009

St. Clair County DHS

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

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, a hearing was held on June 4, 2009. Claimant appeared and testified.

ISSUE

Whether the Department of Human Services (Department) properly determined that the Claimant is not "disabled" for purposes of the Medical Assistance (MA)?

FINDINGS OF FACT

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

1. On November 10, 2008 the Claimant applied for MA-P.
2. MRT denied Claimant's request.
3. On February 23, 2009 the Claimant filed a request for hearing regarding the Department's denial of benefits.

4. The Claimant is 49 years old.
5. The Claimant has a 12th grade education
6. The Claimant suffers from degenerative disc disease, diabetes, major depression recurrent, coronary artery disease, asthma, and anemia.
7. The Claimant's suffer with the following Lower back pain and shoulder pain, legs are numb from knees to feet and feet are numb, right leg is twisted to the right has to use a cane to prevent falling, muscle spasms in neck and shoulder on left side, sneezing can cause her to go into muscle spasm, wears neck brace at times, at most has an hour of day with less pain, always in pain, cramps in legs, feet feel like they are on fire, limited range of motion in neck, shoulders and upper body due to pain, can't lift less than 5 lbs, carpal tunnel in right hand and wears a brace at night to elevate the pain shooting up right arm, can't stand more than 5 minutes, can't sit more than 20 minutes or legs start cramping up, swelling in feet and elevates feet at least 3 times a day, uses a shower chair to clean self, needs help getting dressed, can do light 5 minute chores nothing more due to her pain and condition, suicidal thoughts ongoing basis, was seeing things but medication since January has helped with that, sees a counselor once a week and psychiatrist once a couple months, sleeps a lot during the day, poor sleep due to pain and bathroom trips, wears cervical collar at night for support, loss of interest in activities, lays on the couch all day, crying a lot, gets angry easily, feelings are very dark and feels worthless, legs spasm throughout the day and night, shortness of breath, can only walk 15 feet before she has shortness of breath, occasional chest pains
8. The Claimant's limitations have lasted or are expected to last 12 months or more.

9. The Claimant has significant limitations on physical activities involving sitting, standing, walking, bending, lifting, and stooping.

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 (formerly known as the Family Independence Agency) administers the MA program 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).

In order to receive MA benefits based upon disability or blindness, claimant must be disabled or blind as defined in Title XVI of the Social Security Act (20 R 416.901). The Department, being authorized to make such disability determinations, utilizes the SSI definition of disability when making medical decisions on MA applications. MA-P (disability), also is known as Medicaid, which is a program designated to help public assistance claimants pay their medical expenses.

The law defines disability as the inability to do substantial gainful activity (SGA) 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).

Because disability must be determined on the basis of medical evidence, Federal regulations have delineated a set order entailing a step sequential process for evaluating physical or mental impairments. When claimant is found either disabled or not disabled at any point in the process, the claimant is not considered further.

Addressing the following factors:

The first factor to be consider is whether the Claimant can perform Substantial Gainful Activity (SGA) defined in 20 CFR 416.920(b). In this case, the Claimant is not working. Therefore, the Claimant is not disqualified a this step in the evaluation.

The second step to be determined in considering whether the Claimant is considered disabled is whether the severity of the impairment. In order to qualify the impairment must be considered severe which is defined as an impairment which significantly limits an individual's physical or mental ability to perform basic work activities. Examples of these include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, 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).

In this case, the Claimant's medical evidence of record supports a finding that Claimant has significant physical and mental limitations upon Claimant's ability to perform basic work activities such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; Medical evidence has clearly established that the Claimant has an impairment (or combination of impairments) that has more than a minimal effect on the Claimant's work activities. See Social Security Rulings: 85-28,

88-13 and 82-63.

The Claimant testified she suffers with following lower back pain and shoulder pain, legs are numb from knees to feet and feet are numb, right leg is twisted to the right has to use a cane to prevent falling, muscle spasms in neck and shoulder on left side, sneezing can cause her to go into muscle spasm, wears neck brace at times, at most has an hour of day with less pain, always in pain, cramps in legs, feet feel like they are on fire, limited range of motion in neck, shoulders and upper body due to pain, can't lift less than 5 lbs, carpal tunnel in right hand and wears a brace at night to elevate the pain shooting up right arm, can't stand more than 5 minutes, can't sit more than 20 minutes or legs start cramping up, swelling in feet and elevates feet at least 3 times a day, uses a shower chair to clean self, needs help getting dressed, can do light 5 minute chores nothing more due to her pain and condition, suicidal thoughts ongoing basis, was seeing things but medication since January has helped with that, sees a counselor once a week and psychiatrist once a couple months, sleeps a lot during the day, poor sleep due to pain and bathroom trips, wears cervical collar at night for support, loss of interest in activities, lays on the couch all day, crying a lot, gets angry easily, feelings are very dark and feels worthless, legs spasm throughout the day and night, shortness of breath, can only walk 15 feet before she has shortness of breath, occasional chest pains.

This Administrative Law Judge does take into account claimant's complaints of pain in that the diagnoses do support the claims. Subjective complaints of pain where there are objectively established medical conditions that can reasonably be expected to produce the pain must be taken into account in determining a claimant's limitations.

Duncan Secretary of HHS, 801 F2d 847, 853 (CA6, 1986); 20 CFR 404.1529, 416.929.

In the third step of the analysis, 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. This Administrative Law Judge finds that the Claimant's medical record does not support a finding that the Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR Part 404, Part 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 clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for a 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. A conclusory statement by a physician or mental health professional that an individual is disabled or blind is not sufficient, without supporting medical evidence, to establish disability. 20 CFR 416.927.

The fourth step of the analysis to be considered is whether the Claimant has the ability to perform work previously performed by the Claimant within the past 15 years. The trier of fact must determine whether the impairment(s) presented prevent the Claimant from doing past relevant work. In the present case, the Claimant's past employment history managing a hotel. These positions required her to be on her feet the majority of the day. This position required constant walking and standing. This Administrative Law Judge finds based on the medical evidence and objective, physical, and psychological findings, that the Claimant is not capable of the physical or mental activities required to perform any such position. 20 CFR 416.920(e).

In the final step of the analysis, the trier of fact must determine: if the Claimant's impairment(s) prevent the Claimant from doing other work. 20 CFR 416.920(f). This determination is based upon the Claimant's:

1. residual functional capacity defined simply as "what can you still do despite your limitations? 20 CFR 416.945;
2. age, education, and work experience, 20 CFR 416.963-965; and
3. the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite her limitations. 20 CFR 416.966.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor.... 20 CFR 416.967.

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).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the 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.... 20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once the Claimant makes it to the final step of the analysis, the Claimant has already established a prima facie case of disability. *Richardson v Secretary of Health and Human Services*, 732 Fd2 962 (6th Cir, 1984). Moving forward the burden of proof rests with the state to prove by substantial evidence that the Claimant has the residual function capacity for substantial gainful activity.

After careful review of the Claimant's medical record and the Administrative Law Judge's personal observation of the Claimant at the hearing, this Administrative Law Judge finds the Claimant's exertional and non-exertional impairments render the Claimant unable to engage in a full range of sedentary work activities on a regular and

continuing basis. 20 CFR 404, Subpart P. Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v. Heckler*, 743 F 2d 216 (1986).

The record supports a finding that the Claimant does not have the residual functional capacity for substantial gainful activity. The Department has failed to provide vocational evidence which establishes that, given the Claimant's age, education, work experience, there are significant numbers of jobs in the national economy which the Claimant could perform despite Claimant's limitations. Accordingly, this Administrative Law Judge concludes that 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 as of October 2008.

Accordingly, the Department decision is hereby REVERSED and the Department is ORDERED to initiate a review of the application dated November 10, 2008, if not done previously, to determine Claimant's non-medical eligibility. The Department shall inform Claimant of the determination in writing. The Department shall set this case for review in September 2010.

/s/

Jonathan W. Owens
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 8/25/09

Date Mailed: 8/26/09

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 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.

JWO/at

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