

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: 2009-2051

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

December 10, 2008

Arenac County DHS

ADMINISTRATIVE LAW JUDGE: Rhonda P. Craig

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 telephone hearing was held December 10, 2008. Claimant was not represented.

ISSUE

Is claimant disabled for the purposes of the Medical Assistance program?

FINDINGS OF FACT

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

- (1) Claimant applied for Medical Assistance on July 31, 2008.
- (2) Claimant's impairments have been medically diagnosed as osteoarthritis of the lumbosacral spine, spinal stenosis (L4-L5), small disc herniation (L5-S1), compression deformity (T12, chronic) and chronic obstructive pulmonary disease.

(3) Claimant's physical symptoms are constant severe back pain (despite medication), frequent pain in the legs and knees, and swelling in the lower back (four to five times a week).

(4) Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.

(5) Claimant is 49 years of age. Claimant will be 50 in three months.

(6) Claimant has a high school education.

(7) Claimant has employment experience as an outdoor vendor, a newspaper deliverer, a child care worker and a manager at a fish market.

(8) Claimant has significant limitations on physical activities involving sitting (no more than 20 minutes at a time), standing (no more than 15 minutes at a time), walking (no more than 10 minutes at a time), bending, lifting and stooping. Claimant has difficulty gripping and grasping things with her hands and fingers. Claimant occasionally uses an assistive device for ambulation. Claimant has a limited range of motion in the lumbar spine.

(9) The department found that claimant was not disabled and denied claimant's application on September 26, 2008.

(10) Upon claimant's request for a hearing, medical evidence was submitted to the State Hearing Request Team. The State Hearing Review Team determined that claimant was not disabled for the program.

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 400.10, *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).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, 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 set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

Here, claimant's impairment or combination of impairments is severe but does not meet nor is it the equivalent of a listed impairment. Claimant is also unable to do past work.

Therefore, the determination of disability will be based on claimant's residual functional capacity.

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).

Claimant's impairments and limitations have a major effect upon claimant's ability to perform basic work activities. Claimant is unable to perform the full range of activities for even 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 result in a severe impairment which limits claimant's ability to work. 20 CFR 404.1529.

Claimant's impairments have a major affect upon claimant's ability to perform basic work activities. Claimant is unable to perform any of her past relevant work. Claimant has been

diagnosed with osteoarthritis of the lumbosacral spine, spinal stenosis, small disc herniation and a compression deformity. Her treating physician indicates that she can walk and stand for less than two hours in an eight-hour day and sit less than six hours within an eight-hour day. She can never lift 25 pounds or more and only occasionally lift even ten pounds. She is not able to use either arm or hand for repetitive actions such as pushing and pulling. Her physician indicates that she has a limited range of motion in her lumbar spine and suffers from muscular spasms. In a report dated [REDACTED] an MRI of claimant's lumbar spine indicated the claimant had "developmentally narrow mid and lower lumbar canal superimposed spondylotic and facet hypertrophic changes at L4-L5 crease severe spinal stenosis and moderate bilateral foraminal stenosis at this level." It also indicated a small central disc herniation at L5-S1 producing mild impression upon the tecal sac. Bilateral hypertrophy at this level contribute to moderate bilateral foraminal narrowing. The report also indicated that claimant had minimal superior endplate compression deformity at T12 which appears chronic. At the hearing claimant testified that she injured her back in 1999 as a result of lifting 75 pounds during her work as a paper deliverer. She indicates that because of severe constant back pain, she is severely limited in the amount of sitting, standing, walking, bending, lifting and stooping she can perform.

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

Based upon the claimant's testimony and the medical evidence, claimant appears to be unable to perform the full range of activities for even sedentary work as defined in 20 CFR

416.967(a) because of the nature of her limitations. *Wages v Secretary of HHS*, 755 F2d(6 Cir 1985). Therefore, claimant is disabled for the purposes of the Medical Assistance program. Rule 201.00(h) of Federal Rule 20 CFR 404, Subpart P, Appendix 2.

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 Medical Assistance program as of July 1, 2008. Therefore, the department is ordered to initiate a review of the application of July 31, 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 January 2010.

/s/ _____
Rhonda P. Craig
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 03/24/09

Date Mailed: 03/25/09

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.

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