

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.: 2009-23671

Issue No.: 2009/4031

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

July 27, 2009

Wayne County DHS (43)

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 conducted from Highland Park, Michigan on Monday, July 27, 2009. The Claimant appeared and testified. [REDACTED] appeared on behalf of the Department. At the Claimant's request, the record was extended to allow for the submission of additional medical records. The additional records were received, reviewed, and entered in to the record as Exhibit 3. 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") 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. The Claimant submitted an application for public assistance seeking Medical Assistance (“MA-P”) and State Disability Assistance (“SDA”) benefits on October 18, 2008.
2. On March 13, 2009, the Medical Review Team (“MRT”) determined the Claimant was not disabled for purposes of the MA-P and SDA programs. (Exhibit 1, pp. 5, 6)
3. On March 23, 2009, the Department sent an Eligibility Notice to the Claimant informing her that she was found not disabled. (Exhibit 1, p. 3)
4. On April 23, 2009 the Department received the Claimant’s written Requests for Hearing. (Exhibit 1, p. 2)
5. On June 4, 2009, the State Hearing Review Team (“SHRT”) determined the Claimant not disabled finding the Claimant capable of performing light work. (Exhibit 2)
6. The Claimant’s alleged physical disabling impairment(s) are due to rheumatoid arthritis and high blood pressure.
7. The Claimant’s has not alleged any mental disabling impairment(s).
8. At the time of hearing, the Claimant was 48 years old with a [REDACTED] birth date; was 5’7” in height; and weighed 180 pounds.
9. The Claimant has a limited education with a with a work history as a courier, home health care aide, plant manager, general laborer, and manager at fast food restaurants.
10. The Claimant’s impairment(s) have lasted, or are expected to last, continuously for a period of 12-months or longer.

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”), formally 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 416.929(a)

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) 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 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) In the record presented, the Claimant is not involved in substantial gainful activity therefore is not ineligible for disability 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 non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not 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 physical disability due to rheumatoid arthritis and high blood pressure.

On [REDACTED], a renal ultrasound was performed on the Claimant which revealed right milt hydroureteronephrosis warranting a CT scan for further evaluation.

On [REDACTED], the Claimant presented to the emergency room with complaints of abdominal pain, nausea, and vomiting. A CT scan revealed fluid within the pelvis as a result of a ureteral tear requiring surgical intervention. The Claimant underwent an exploratory laparotomy and right ureteral neocystostomy without complications.

On [REDACTED], the Claimant presented to the hospital for surgical removal of a right upper back mass. The procedure went without complication.

On [REDACTED], a Medical Examination Report was completed by the Claimant's treating rheumatologist. The current diagnoses were listed as severe joint deformity and rheumatoid arthritis (confirmed by blood work). The physical examination found the Claimant unable to raise her arms, limped, and had a decreased range of motion with hand atrophy. The Claimant's condition was deteriorating limited her to occasionally lift/carry under 10 pounds and

unable to perform repetitive actions with any extremity. The Claimant required a cane for ambulation and was found unable to meet the needs in her home.

On this same date, a Medical Needs form was completed by the Claimant's treating rheumatologist. The Claimant was determined to be unable to engage in employment during her entire lifetime.

On [REDACTED], the Claimant attended a department ordered examination. The physical examination documented mild tenderness to palpation of the lumbar area with edema as well as swelling in the extremities. The Claimant's gait was slow and she was unable to do tandem walk, heel walk and toe walk. Grip strength was 4/5 bilaterally. The Claimant was found able to occasionally lift/carry 5-10 pounds; walk about 2-4 hours in an eight hour day with sitting at about 6 hours; and was able to perform simple grasping, reaching, pushing, pulling, and fine manipulation without repetition. The Claimant was able to occasionally operate foot and leg controls. Ultimately, the Claimant was diagnosed with uncontrolled blood pressure and arthritis.

On [REDACTED], the Claimant's treating rheumatologist authored a letter and attached the lab results confirming the Claimant's diagnosis of rheumatoid arthritis. The Claimant's antibody level of Rheumatoid factor was 685.8 with a CCP antibody level of 206. The physician stated that these levels were extremely high and cause joint damage, pain, and swelling. As a result, the Claimant is required to use "strong medicines" to include injection medications like ENBREL and Methotrexate, and Steroids which have strong and serious side effects. The rheumatologist opined that the Claimant cannot do her activities of daily living and is disabled from working.

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 some medical evidence establishing that she does have physical limitations on her ability to perform basic work activities. The medical evidence has established that 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 has alleged physical disabling impairments due to rheumatoid arthritis and high blood pressure. Listing 14.00 discusses Adult Immune System Disorders. Autoimmune disorders are caused by dysfunctional immune responses directed against the body's own tissues, resulting in chronic, multi-system impairments that differ in clinical manifestations, course, and outcome and are sometimes referred to as rheumatic diseases, connective tissue disorders, or collagen vascular disorders. 14.00A2 Inflammatory arthritis involving the peripheral joints may be associated with disorders such as rheumatoid arthritis. 14.00D6c(i) Listing-level severity in 14.09A and 14.09C1 is shown by an impairment that results in an extreme limitation and is satisfied with persistent inflammation or deformity in one major peripheral weight-bearing joint resulting in the inability to ambulate effectively or one major peripheral joint in each upper extremity resulting in the inability to perform fine and gross movements effectively. 14.00D6e(i) To satisfy the functional criterion in a listing, the disorder must result in a marked level of limitation in one of three general areas of functioning: activities of daily living, social functioning, or difficulties in completing tasks due to deficiencies in concentration, persistence, or pace. 14.00H4

Listing 14.09 is satisfied when an individual has inflammatory arthritis with persistent inflammation or persistent deformity of one or more major peripheral weight-bearing joints resulting in the inability to ambulate effectively or, with one or more major peripheral joint in each upper extremity resulting in the inability to perform fine and gross movements effectively.

In the record presented the Claimant's diagnosis of rheumatoid arthritis is supported by objective, acceptable medical documentation (lab report). The Claimant's treating physician lists the Claimant's condition as deteriorating noting permanent joint damage, pain, and swelling as well as the need for a cane for ambulation. The arthritis is in the Claimant's hands, wrists, back, legs, knees, and ankles. Additionally, the Claimant is unable to perform repetitive actions with any extremity and has limitations equating to less than sedentary restrictions. Ultimately, based upon the submitted record, it is found that the Claimant's rheumatoid arthritis, meets, or is the equivalent thereof, the intent and severity requirement of Listing 14.09. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required.

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 continued SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the findings of fact and conclusions of law, finds the Claimant disabled for purposes of the Medical Assistance program and the State Disability Assistance program.

It is ORDERED:

1. The Department’s determination is REVERSED.
2. The Department shall initiate review of the October 18, 2008 application to determine if all other non-medical criteria are met and inform the Claimant of the determination.
3. The Department shall supplement the Claimant any lost benefits she 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 October 2010 in accordance with department policy.

Colleen M. Mamelka

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

Date Signed: 09/29/09

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 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.

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