

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: 2009-25914
Issue No: 2009, 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 29, 2009
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

A hearing was held on July 29, 2009 pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department received on May 14, 2009. At the hearing, the Claimant was present and testified along with her daughter, [REDACTED]. Dywanda Knight, 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") 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. Claimant applied for SDA and MA as of October 13, 2008. Claimant applied for retroactive benefits to July of 2008.
2. Claimant is 5'5 1/2" tall and weighs 247 pounds.
3. Claimant is right handed.
4. Claimant is 52 years of age.

5. Claimant's impairments have been medically diagnosed as chronic right ankle injury, right dorsal radial wrist pain, chronic neck pain, depression and, complex regional pain syndrome, lumbar radiculopathy, asthma, Sarcoidosis (disease of the lungs), gastritis and right DeQuervain's tendonitis.
6. Claimant's physical symptoms are migraine headaches, lower back pain, pain in legs, ankles and heels, right mouth pain (tooth abscess), and speech problems (sometimes Claimant's mouth is moving and words don't come out).
7. Claimant's mental symptoms are memory (daughter has to remind her of things), concentration is not like it used to be, anxiety attacks – every day (shortness of breath, paranoia), crying spells (1x/day), confusion, Fear/anger, nervousness – (Claimant can't stand noise, loud talking), poor appetite, weight loss/gain (gained 67 lbs, Claimant cannot understand why), Sleep disturbances (Claimant wakes up at all hours of the night from noise and pain. Claimant wakes 3-4x/night and will sleep for a total of 4 hours), fatigue, suicidal thoughts, avoids going into public, guilt feelings, bad nightmares, paranoid, and poor self esteem.
8. Claimant takes the following prescriptions (side effects):
 - a) Aciphex – gastro problems
 - b) Ambien – sleep
 - c) Topomax – migraines, takes proactively
 - d) Singular
 - e) Allegra
 - f) Lyrica – nerve pain
 - g) Simcor – cholesterol
 - h) Vitamin D
 - i) Xanax
 - j) Pravastatin – cholesterol
 - k) Diazide – High blood pressure
 - l) Proair – asthma
 - m) Advair – asthma
 - n) Vicodin 7.5 – maybe once a week
 - o) Darvocet – only daily 1-2x/day
 - p) Antibiotic taking 4x/day
 - q) Deflector patches puts on pain spots daily
9. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
10. Claimant has a Masters degree + 30 extra credits in education in leadership and guidance.
11. Claimant is able to read & write. Claimant is having difficulty performing basic math skills recently.

12. Claimant last worked 4/29/08 for [REDACTED] as a teacher teaching geometry and language arts. Claimant worked for 14 years as a teacher. Claimant left this position due to her ankle injury.
13. Claimant testified to the following limitations:
 - Sitting: 30 minutes
 - Standing: 5 minutes at a time
 - Walking: ½ block
 - Bend/stoop: Not without discomfort
 - Lifting: Not even a gallon of milk
 - Grip/grasp: Yes. Drops things all the time.
14. Claimant performs household chores such as preparing meals for herself when she can such as celery with peanut butter, carrots, V8 juice, and fresh fruit. Claimant likes to cook chicken in the oven. Claimant eats in chair or bed, but leaves dishes on the sink. Claimant's daughter comes by every other day to cook or bring food. Daughter shops, cleans and does dishes. Claimant's daughter also takes care of Claimant's hair every week or every two weeks.
15. Claimant has braces on both wrists one set one for day and one for night; boot on her right foot that goes to the knee; support hose ordered from doctor; deflector patches on back, leg, feet; and an orthopedic cane from medical supply company.
16. The Department received Claimant's request for
17. Medical Records Reviewed are as follows, in part:
 - [REDACTED] Pain Management (Exhibit 2, p. 20)
Possible complex regional pain syndrome/RSD. Fxd fifth digit that has resolved.
 - [REDACTED] MRI Right Ankle/foot (Exhibit 2, p. 2)
IMPRESSION: Fracture through the fifth proximal phalangeal head.
 - [REDACTED] Pain Management (Exhibit 2, p. 29)
IMPRESSION: Lumbar radiculopathy, Complex regional pain syndrome of right lower extremity, hypertension, asthma, sickle cell train, sarcoidosis.

PLAN: Use of TENS unit, right lumbar paravertebral sympathetic block, neurontin and lidoderm patch.
 - [REDACTED] Pain Management (Exhibit 2, p. 1)
Pt presents for reevaluation of right thigh, left calf and bilateral foot and ankle pain. 75-80% improvement after a series of sympathetic epidural injections.

PHYSICAL EXAM: Straight leg raise is positive on the left while seated. She ambulates with the use of a cane. Her gait is antalgic.

IMPRESSION: Lumbar radiculopathy, hypertension, asthma, hypercholesterolemia - continue with Flector patch applied to the affected area.

██████████ Hand & Reconstructive Surgeon Progress Report (Exhibit 3,p. 1)

DX: right DeQuervain's tendonitis. There is no sign of carpal tunnel syndrome, with therefore a negative clinical correlation of the findings on EMG test. There is neck arthrosis.

██████████ IME Psychologist (Exhibit 1, pp. 3-6)

DIAGNOSES: Anxiety Disorder

GAF 55

Medical Source Statement: Based on today's examination, the claimant presented as a woman who reported a good deal of stress of trying to work at her job after her injuries. However, she was able to demonstrate a number of cognitive strengths in terms of awareness of events in the world around her and relatively intact short term memory. Thus, she would be felt capable of utilizing these skills to perform acceptably in work type activities, despite the functional difficulties she reports.

██████████ Pain Management (Exhibit 2, p. 24)

Pt was given a Rx for Medrol Dosepak and had an Unna boot compression wrap placed on the area.

██████████ IME – first page only in file

██████████ Pain Management (Exhibit 2, p. 22)

Pt presents with sharp shooting pains in bilateral legs and also hands and fingers. Hands and feet are also swollen. She cannot lift her arms up. She is unable to wear shoes.

DX: Complex regional pain syndrome and painful foot.

██████████ Disability Certificate (Exhibit 2, p. 9)

"Ms. Hill may return to work on ██████████ with restrictions of no excessive standing & walking and sedentary (sitting) work duties only. She has to keep her foot elevated & use a cane secondary to complications from an ankle and toe injury."

██████████ Pain Management (Exhibit 2, p. 19)

The patient was advised that she may need to make an appointment for the pains due to her pain being out of the proportion to the

initial injury. At this time, due to continued chronic pain and swelling she still is unable to return to work.

ASSESSMENT: Achilles tendonitis, ankle sprain, sinus tarsitis, sural nerve neuritis, and fractured fifth digit right.

████████ Pain Management (Exhibit 2, p. 3)

Foot pain began on ██████████ when she fell and broke her baby toe and sprained her ankle. Foot was casted, but too tight so removed and splinted. RTW on ██████████ and student stomped on her foot on ██████████.

████████ ER records

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 is not currently working. 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 from her physicians showing lumbar radiculopathy, complex regional pain syndrome, asthma, Sarcoidosis, DeQuervain’s tendonitis and anxiety disorder. Claimant also testified to physical limitations in terms of sitting, standing, walking and lifting.

The medical evidence has established that Claimant has physical and mental impairments that have more than a minimal effect on basic work activities; and Claimant’s impairments have lasted continuously for more than twelve months. It is necessary to continue to evaluate the Claimant’s impairments under step three.

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 discusses the analysis and criteria necessary to a finding of a listed impairment. The Listing 1.01 *Muskuloskeletal Impairments* was reviewed. In this case, 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 medical evidence reviewed does not show that the physical impairments meet the intent or severity of the listings. Sequential evaluation under step four or five is necessary. 20 CFR 416.905.

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.

To be eligible for MA-P, claimant must have a medically determinable impairment, meaning impairment(s) that can be demonstrated by a physical or mental examination, and/or by X-rays. Findings consist of symptoms, signs and laboratory findings. Signs are anatomical, physiological or psychological abnormalities which can be observed apart from statements (or testimony) of claimant which are considered symptoms. (20 CFR 416.928). Either claimant's or another's statements alone are not enough to establish a physical or mental impairment (20 CFR

416.929(a)) and must be supported by medically identifiable signs as explained above. The reason being is because symptoms are a person's own private experience and may or may not be caused by a real physical or mental illness.

In the present case, Claimant left her job following an initial ankle injury of a fractured toe and sprained ankle on [REDACTED]. When Claimant returned to work in [REDACTED], a student stepped on her foot causing a re-injury. Claimant has treated consistently for the ankle sprain, broken toe and subsequent pain. Claimant's physician returned her to work in [REDACTED] with a restriction to sedentary work. On [REDACTED], however, Claimant showed a 75-80% improvement in her pain after a series of sympathetic epidural injections. Then on [REDACTED], the Pain Management Center doctor indicated that Claimant's fractured toe had resolved although Claimant was suffering from possible complex regional pain syndrome.

When considering pain, there must be an assessment of whether the claimant's subjective complaints are supported by an objective medical condition which can be expected to cause such complaints. 20 CFR 416.929. If so, then an assessment must be done to consider whether objective medical evidence confirms the severity of the alleged pain or whether the objectively established medical condition is of such a severity that it can reasonably be expected to produce the alleged disabling pain. *Duncan v Secretary of HHS*, 801 F2d 847, 853 (1986); *Felisky v Bowen*, 28 F3d 213 (6th Cir, 1994).

In this case, Claimant complained of ongoing pain in her pins and needles throughout her big toe and ankle. The doctor's notes indicate that this is long term chronic pain associated with an injury from an ankle sprain and broken toe. Meanwhile, physical examination also revealed a positive straight leg raise and tenderness with palpation over the left thoracic and lumbar paravertebrals. Claimant uses a cane and walks with an antalgic gait. Claimant's pain management doctor has diagnosed a lumbar radiculopathy. Treatment consisted a paravertebral

sympatheic block. Claimant also complains of severe pain at her wrist and wears braces for carpal tunnel syndrome. The most recent EMG test, however, was negative for carpal tunnel syndrome. Hence, right DeQuervain's tendonitis was diagnosed.

Claimant also has been diagnosed with Asthma and Sarchoidosis as well as hypertension. None of these conditions are causing impairments severe enough to disable Claimant from working. Claimant also complained of mental symptomology including, poor concentration, anxiety attacks, crying spells, and confusion. However, Claimant is not receiving any psychological treatment. In fact, Claimant indicated that she was referred to a psychologist but never received treatment. There is no evidence of psychological issues other than the independent medical examination. The IME psychologist found that Claimant "would be felt capable of utilizing . . . skills to perform acceptably in work type activities, despite the functional difficulties she reports."

Claimant has prior work experience as a teacher. The directory of occupational titles indicates that work as a teacher requires a light exertional activity level. Given the limitations to which Claimant has testified, Claimant would be limited to sedentary work. Based on this information the undersigned finds the Claimant unable to return to her past relevant work as a teacher.

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 sedentary. 20 CFR 416.967. 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 fifty-two years is considered an *individual approaching advanced age*; a category of individuals in age group (50-54) who may be significantly limited in vocational adaptability if restricted to sedentary work. However, Claimant's educational level of a master's degree plus 30 additional credit hours must be taken into consideration in determining her ability to work. According to Rule 201.15 of the transferable work table located in 20 CFR 404, Subpart P, Appendix 2, an individual approaching advanced age, with an educational level of high school graduate or more who has transferable skills is not disabled.

Accordingly, this Administrative Law Judge finds that claimant's impairments restrict her to sedentary work and that Claimant is not disabled for the purposes of the programs. 20 CFR 404, Subpart P, Appendix 2, Rule 201.15.

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

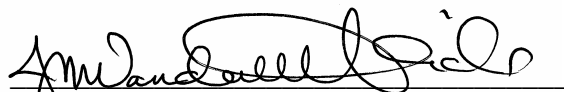
Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.1 et seq., and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM). A 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 insufficient evidence to support a finding that Claimant's impairment has disabled her under SSI disability standards. This Administrative Law Judge finds the Claimant is "not 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 not medically disabled under the MA program as of October 13, 2008.

IT IS ORDERED that the Department's decision in this regard is AFFIRMED.



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

Date Signed: 12/10/09

Date Mailed: 12/11/09

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:

