

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: 2009-37215
Issue No: 2009, 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 18, 2009
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted by hearing on November 18, 2009 pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department on August 4, 2009. At the hearing, the Claimant was present and testified along with her nephew, [REDACTED] and her mother, [REDACTED]. Dywana 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") program.

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 April 28, 2009.
2. Claimant is 5'5" tall and weighs 180 pounds.
3. Claimant is right handed.

4. Claimant is 53 years of age.
5. Claimant's impairments have been medically diagnosed as scoliosis, Hepatitis C, cyst on ovary, bilateral ankle tendonitis and major depression.
6. Claimant's physical symptoms are knee giving out – causes Claimant to stumble, low back pain, side pain, difficulty walking, sharp pain in feet (3-4x/week), left arm/finger numbness when she stands or walks for awhile, nausea (20x/month), shortness of breath, difficulty seeing (nearsighted), chest pains, dizzy spells (4-5x/week), and headaches.
7. Claimant's mental symptoms are forgetfulness of what to say, crying spells (every other day), confusion, anger, nervousness, weight loss (16 lbs over a couple months), fatigue, suicidal thoughts (3-4x/week), avoids public, guilt feelings, hallucinations (hears voices 4x/week), paranoid, and low self esteem.
8. Claimant takes the following prescriptions:
 - a) Tylenol #3
 - b) Flexeril
 - c) Naprosyn
 - d) Xanax
 - e) Lexopril - depression
 - f) Transzone – sleeping pill
 - g) Albuteral – 3-4x/week
9. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
10. Claimant has an 11th grade education.
11. Claimant is able to read/write/perform basic math skills (Claimant can add & subtract a bit but Claimant cannot multiply or divide).
12. Claimant last worked as a waitress in 2006 where she lifted serving trays, stood on her feet all day, and had to bend and stoop. Claimant left this position because tendonitis prevented her from standing on feet for so long.
13. Claimant has prior employment experience cleaning buildings (vacuuming, dusting, was on feet all day); and as a cashier (stood and rang up grocery orders. Claimant has problems with back sitting for too long).
14. Claimant testified to the following physical limitations:
 - Sitting: 2 hours (then has to lay down)
 - Standing: 1 hour (has to lay down and rest back)
 - Walking: 1 block
 - Bend/stoop: Hard to stand back up
 - Lifting: 10 lbs. Claimant does not lift gallon of milk.
 - Grip/grasp: difficulty with both hands (drops things often)

- Difficulty with stairs (tries to avoid it, but can if she has to)
- 15. Claimant performs household chores such as washing dishes a little bit, preparing TV dinners, make up bed in a.m. Claimant's Nephew does outside work such as taking out trash, mowing the lawn, does the laundry, vacuums the floors, and cleans the bathroom.
- 16. Claimant does not stand in tub b/c she is afraid she will lose balance and fall. Claimant's mother drives Claimant to doctor appointments. Nephew or mother will take Claimant shopping.
- 17. Claimant has been prescribed a back brace, but does not have it yet due to lack of funds.
- 18. The Department found that Claimant was not disabled and denied Claimant's application on 8/4/09.
- 19. Medical records examined are as follows:

██████████ Mental Treatment Plan (Exhibit 3)

DX: Mood Disorder NOS

GAF: Current 40

██████████ Internist IME (Exhibit 2)

MUSCULOSKELETAL: There are spasms noted in the thoracolumbar muscles bilaterally. Bilateral knees, hips and ankles have full range of motion.

DX: Hepatitis C; Levoscoliosis of the thoracolumbar spine with muscle spasms and chronic pain; bilateral ankle tendonitis.

██████████ ER IME (Exhibit 2)

EXTREMITIES: Scoliosis on right side. She has tenderness to palpation in the parthoracic area, paralumbar.

BONES & JOINTS: Able to squat to 50% of the distance and recover and bend to 90% of the distance and recover. Straight leg raising while lying 0-50.

IMPRESSION: Chronic Depression, chronic back pain. She has ongoing pain and is not able to do her work because of problems related to lifting, bending, pushing and pulling and standing for long periods of time. She does have obvious curvature of her spine on exam today.

██████████ Psychiatric IME (Exhibit 2)

COMPLAINTS: disturbed sleep, decreased concentration, low energy level, crying spells on and off, suicidal thoughts in the past with gestures 2 months ago, loss of interest in pleasurable activities.

PHYSCHOSIS: last six months hearing voices calling her name. Believes that people can read her mind and that some alien force is controlling her.

MENTAL TREND: The patient admitted to auditory hallucinations, delusion of control and persecutory delusions. She feels helpless, hopeless and worthless.

EMOTIONAL REACTION: The patient's mood is depressed and her affect is constricted.

MENTAL CAPACITY: Memory – deficient; Calculation – poor; Similarities and differences: Inadequate

DX: Major depression, recurrent, severe with psychotic features.

GAF: 40-45

PROGNOSIS: Fair with treatment. The claimant is not able to manage her benefit funds.

Psychiatry Medical Exam Report (Exhibit 1, pp. 20-21)

HX: Depression – many medical problems. Crying spells. Sad. Low self esteem. Helpless & hopeless feelings. Decreased sleep, suicidal thoughts.

DX: Mood disorder – depression related to health problems, scoliosis, angina and neck problems. Hepatitis.

GENERAL: Appearance marginal. Pain level 9

RESPIRATORY: Shortness of breath

CARDIOVASCULAR: Chest pain, dizzy spells, leg cramps, edema, atypical angina

MENTAL: Depression with suicidal thoughts.

PHYSICAL LIMITATIONS: No lifting, stand/walk less than 2 hours in 8 hour day, sit about 6 hours. No fine manipulating with right hand.

MENTAL LIMITATIONS: Limited in comprehension, memory, sustained concentration, and social interaction.

MENTAL RFC ASSESSMENT: Markedly limited as follows:

1. The ability to understand and remember detailed instructions.
2. The ability to carry out detailed instructions.
3. The ability to maintain attention and concentration for extended periods.
4. The ability to perform activities within a schedule, maintain regular attendance and be punctual within customary tolerances.
5. The ability to work in coordination with or proximity to others without being distracted by them.
6. The ability to make simple work related decisions.
7. The ability to complete a normal workday without interruptions from psychologically based symptoms and to perform at a consistent basis without an unreasonable number and length of rest periods.

8. The ability to accept instructions and respond appropriately to criticism from supervision
9. The ability to get along with coworkers or peers without distracting them or exhibiting behavior extremes.
10. The ability to set realistic goals or make plans independently of others.

██████████ IME (Exhibit 1, pp. 34-36)

FUNCTIONAL: The pt is unable to heel walk and toe walk.

IMPRESSION: Mild lumbar scoliosis, tendonitis of the feet, status post bilateral hallux valgus repair. Hx of hepatitis

PHYSICAL LIMITATIONS: Stand up to 1-2 hrs. Push up to 15-20 lbs.

FUNCTIONAL: The pt is unable to heel walk and toe walk.

IMPRESSION: Mild lumbar scoliosis, tendonitis of the feet, status post bilateral hallux valgus repair. Hx of hepatitis

PHYSICAL LIMITATIONS: Stand up to 1-2 hrs. Push up to 15-20 lbs.

██████████ Gynecologic Exam (Exhibit 1, p. 46)

Pelvic pain probably right ovarian cyst.

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 last worked in 2006. 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 medical providers showing diagnoses of scoliosis, Hepatitis C, bilateral ankle tendonitis, cyst on ovary and major depression. Claimant also tested markedly limited in her mental functional capacity and is under physical restrictions by her medical doctors. Therefore, 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 20 CFR Part 40, Subpart P, Appendix 1 (20 CFR 416.920(d), 416.925 and 416.926). 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 Listings 1.02 *Major dysfunction of the joints*, and 12.04 *Affective Disorders* were 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.

Claimant testified to physical limitations which were supported, in part, by the independent medical examiner. Claimant testified that she was able to sit for 2 hours at a time,

stand for 1 hour at a time and walk a block. In addition, Claimant had difficulty bending/stooping, stairs and gripping/grasping with both hands. The Independent Medical examiner found that Claimant was able to stand 1-2 hours and push 15-20 lbs. The undersigned finds Claimant's testimony regarding her physical limitations credible.

Claimant's prior employment, based on her testimony of her job duties would have been considered unskilled and light in exertional level as all the jobs (waitressing, cleaning and cashier) required walking and/or standing a significant portion of the day. Based on the hearing record, medical records and Claimant's testimony, the undersigned finds the Claimant limited to sedentary work. Claimant, therefore, is unable to return to past relevant work in any of the above mentioned prior occupations. Evaluation under step five will be made according to the law.

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 at the limit of sedentary exertional range as light work requires prolonged periods of time

spent walking or standing. 20 CFR 416.967. Claimant has additional limitations based on her inability to grip or grasp.

In addition, Claimant has mental limitations including a GAF of 40 by both her treating psychiatrist and an independent psychiatrist. A GAF of 40 translates to “some impairment in reality testing or communication (e.g., speech is at times illogical, obscure, or irrelevant) OR major impairment in several areas, such as work or school, family relations, judgment, thinking, or mood (e.g., depressed 31 man avoids friends, neglects family, and is unable to work).”

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-three 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. 20 CFR 404, Subpart P, Appendix 2, Rule 201.00(g). Considering Claimant’s medical limitations, this Administrative Law Judge finds that claimant’s impairments render her capable of doing only sedentary work. Given Claimant’s age, education, and prior work experience of unskilled work, Claimant is disabled by law for the purposes of the programs pursuant to the applicable work table. 20 CFR 404, Subpart P, Appendix 2, Table 1, Rule 201.09.

Furthermore, The Administrative Judge finds that the Claimant’s mental and physical impairments and limitations have a major effect upon Claimant’s ability to perform basic work activities. The total impact caused by the combination of medical problems must be considered.

The combination of Claimant's impairments results in severe impairment which limits Claimant's ability to work. 20 CFR 404.1529. The undersigned finds Claimant disabled under the Social Security Regulations.

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.

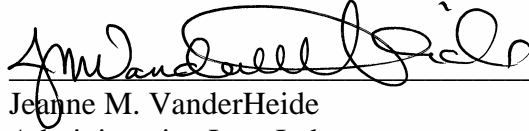
In this case, there is sufficient evidence to support a finding that Claimant's impairment has disabled her under SSI disability standards. This Administrative Law Judge finds the Claimant is "disabled" for purposes of the MA and SDA programs.

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 MA and SDA programs as of April 29, 2009.

Therefore, the department is ORDERED to initiate a review of the application of April 28, 2009, 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
December, 2010.


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

Date Signed: 02/02/10

Date Mailed: 02/03/10

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:

