

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: 2009-6245
Issue No: 2009, 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 12, 2009
Macomb County DHS

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 held in Warren, Michigan on February 12, 2009. The Claimant appeared and testified, along with [REDACTED]. The Claimant was represented by [REDACTED]. [REDACTED] appeared on behalf of the Department. This matter is now before the undersigned for final decision.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance (MA-P); Retro MA-P; 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 a public assistance application seeking MA-P, Retro MA-P from January 2008, and SDA benefits on February 8, 2008.

2. On March 25, 2008, the Medical Review Team ("MRT") deferred the disability determination in order for the Claimant to attend a consultative examination. (Exhibit 1, pp. 29–31)

3. On April 1, 2008, the Claimant attended the Department scheduled consultative examination. (Exhibit 1, pp. 4–12)

4. On June 10, 2008, the MRT determined the Claimant was not disabled finding the Claimant's impairment(s) did not prevent employment of 90 days or more for SDA purposes, and finding the Claimant lacked duration for MA-P purposes. (Exhibit 1, pp. 2, 3)

5. On June 13, 2008, the Department sent the Claimant an eligibility notice informing her that she was found not disabled thus not eligible for MA-P benefits. (Exhibit 1, p. 1)

6. On September 10, 2008, the Department received the Claimant's Request for Hearing protesting the determination that she was not disabled. (Exhibit 2)

7. On December 18, 2008, the State Hearing Review Team ("SHRT") found the Claimant not disabled and capable of performing light work. (Exhibit 3, pp. 1, 2)

8. The Claimant's alleged physical disabling impairments are due to high blood pressure, diabetes, foot sores, pain, and swelling.

9. The Claimant has not alleged any mental disabling impairments.

10. At the time of hearing, the Claimant was 49 years old with a [REDACTED] birth date; was 5' 6" and weighed 240 pounds.

11. The Claimant is a high school graduate with an employment history as a home care provider, deli counter person, and assistant manager.

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 applicant 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) 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) 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 previously stated, 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 and last worked in May of 2007. The Claimant is not disqualified from receipt of disability benefits 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 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 disability on the basis of high blood pressure, diabetes, and foot pain, which includes sores and swelling.

In support of the Claimant's claim of disability, older medical records were submitted to establish the onset of the Claimant's diabetes. [REDACTED]

[REDACTED] with complaints of pain and ulcer in the right big toe. Ultimately, the Claimant's toe had to be amputated and the Claimant was diagnosed as a diabetic. On [REDACTED] [REDACTED], the Claimant was admitted to [REDACTED] after complaints of swelling and infection of her second toe and bottom of her foot. (The Claimant was previously treated on August 4–8th for the same condition) The Claimant was taken to surgery for removal of her second toes and partial amputation of the second metatarsal. A wound VAC was applied. The final diagnosis was advanced cellulitis and abscess due to Methicillin-resistant *Staphylococcus aureus* ("MRSA") with gangrene, iron deficiency, diabetes

mellitus type 2, hypertension, and peripheral neuropathy. The Claimant followed up with the [REDACTED], which concluded a "near complete improvement of her soft tissue infection."

[REDACTED], the vascular surgeon submitted a Medical Examination Report on behalf of the Claimant. The surgeon (who first examined the Claimant in May of 2007) found the Claimant's condition as improving noting "no physical limitations" and finding the Claimant able to ambulate without the need for assistive devices. The Claimant was found able to stand and/or walk about 6 hours in an 8 hour day and able to lift 10 pounds on a regular basis. No further limitations were noted or imposed.

On [REDACTED] the Claimant presented to [REDACTED] with complaints of pain, swelling and abscess formation. Surgical debridement and removal of the affected second metatarsal was performed and cultures taken during surgery showed MRSA. The Claimant was discharged on [REDACTED] with a final diagnosis of MRSA abscess and osteomyelitis of the right foot, diabetes mellitus type 2, hypertension, and iron deficiency anemia.

On [REDACTED], the Claimant's treating physician submitted a Medical Examination Report on the Claimant's behalf stating a current diagnosis of abscesses, cellulitis, osteomyelitis, and amputation of first and second toes. The Claimant was found to be in stable condition, yet unable to lift/carry any weight, and requiring a walker for ambulation. The Claimant's left foot had an open wound which was treated with a wound VAC.

On [REDACTED], the Claimant attended a Department scheduled evaluation at [REDACTED]. The Claimant's diabetes was found to be well controlled although an ulcer over the right foot was noted. The Claimant was able to walk on heels and toes without assistance, and was able to squat and arise from a squatting position. Handgrip and pinch

strength were normal and equal in both hands. The ulcer on the medial aspect of the foot was “well healing with healthy granulation tissue.” The Claimant’s right big toe and second toe were previously amputated without effect on the Claimant’s range of motion and/or ambulation. Ultimately, the Claimant’s type 2 diabetes was found to be well controlled with medication and the toe amputations were well healed.

On September 26, 2008, another DHS-49 was submitted by [REDACTED] on behalf of the Claimant. The Claimant was limited to occasionally lifting 10 pound with frequent lifting of less than 10 pounds. The Claimant’s was found to have limited weight bearing on her right foot due to osteomyelitis and amputation.

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 objective medical evidence establishing that she does have some physical limitations on her ability to perform basic work activities. Accordingly, 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 asserts disabling physical impairments due, in part, to high blood pressure and hypertension. Appendix I, Listing of Impairments, discusses the analysis and criteria necessary to support a finding of a listed impairment. Listing 4.00 defines cardiovascular impairment in part, as follows:

. . . any disorder that affects the proper functioning of the heart or the circulatory system (that is, arteries, veins, capillaries, and the lymphatic drainage). The disorder can be congenital or acquired. Cardiovascular

impairment results from one or more of four consequences of heart disease:

- (i) Chronic heart failure or ventricular dysfunction.
- (ii) Discomfort or pain due to myocardial ischemia, with or without necrosis of heart muscle.
- (iii) Syncope, or near syncope, due to inadequate cerebral perfusion from any cardiac cause, such as obstruction of flow or disturbance in rhythm or conduction resulting in inadequate cardiac output.
- (iv) Central cyanosis due to right-to-left shunt, reduced oxygen concentration in the arterial blood, or pulmonary vascular disease.

An uncontrolled impairment means one that does not adequately respond to the standard prescribed medical treatment. 4.00A3f In a situation where an individual has not received ongoing treatment or have an ongoing relationship with the medical community despite the existence of a severe impairment, the disability evaluation is based on the current objective medical evidence. 4.00B3a If an individual does not receive treatment, an impairment that meets the criteria of a listing cannot be established. *Id.* Hypertension (high blood pressure) generally causes disability through its effect on other body systems and is evaluated by reference to specific body system(s) affected (heart, brain, kidneys, or eyes). 4.00H1 Hypertension, to include malignant hypertension, is not a listed impairment under 4.00 thus the effect on the Claimant's other body systems were evaluated by reference to specific body parts.

In this case, the record is devoid of any end organ damage as a result of the Claimant's high blood pressure. Accordingly, the Claimant's medical records do not meet the severity requirement of a listing within 4.00.

The Claimant also asserts physically disabling impairments due to diabetes mellitus with amputation, to include foot swelling and pain. The Claimant was diagnosed with type 2 diabetes in 2007 which required, initially, amputation of the Claimant's big toe. Subsequently, the Claimant required amputation of the second toes and second metatarsal. Listing 9.08 discusses diabetes mellitus and, in order to meet this Listing, an individual must also establish:

- A. *Neuropathy* demonstrated by significant and persistent disorganization of motor function in two extremities resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C); or
- B. *Acidosis* occurring at least on the average of once every 2 months documented by appropriate blood chemical tests (pH or pCO₂ or bicarbonate levels); or
- C. *Retinitis proliferans*; evaluate the visual impairment under the criteria in 2.02, 2.03, or 2.04.

11.00C. Persistent disorganization of motor function in the form of paresis or paralysis, tremor or other involuntary movements, ataxia and sensory disturbances (any or all of which may be due to cerebral, cerebellar, brain stem, spinal cord, or peripheral nerve dysfunction) which occur singly or in various combinations establish a neurological impairment. 11.00C The degree of interference with locomotion and/or interference with the use of fingers, hands, and arms are considered. *Id.*

In this case, the record is insufficient to find the Claimant's impairment(s) meet, or is the equivalent of, the severity requirements of Listing 9.08. Instead, the records indicate the Claimant has normal gait and is able to ambulate effectively without the use of assistive devices. Accordingly, based upon the medical evidence alone, the Claimant cannot be found disabled under this Listing. Based upon the foregoing, the Claimant's eligibility under Step 4 is considered. 20 CFR 416.905(a)

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv) An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3) Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1) Vocational factors of age, education, and work experience, and whether

the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3) RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967 Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a) 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. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b) Even though 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. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c) An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d) An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.*

Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e) An individual capable of very heavy work is able to perform work under all categories. *Id.*

Over the past 15 years, the Claimant worked primarily as a home care provider, assistant manager and deli counter person whose job responsibilities included standing, carrying/lifting up to 50+ pounds, walking, reaching, bending, and squatting. This employment is classified as unskilled, medium work.

The Claimant testified that she can lift/carry 10 pounds or less; sit for ½ hour; and slowly walk approximately 2 blocks while in pain. The Claimant is able to stand for 20 minutes and loses her balance when she squats. The Claimant further testified that she is able to grip and grasp without issue. Similarly, the Claimant's [REDACTED], indicated the Claimant was able to regularly lift 10 pound or less. The Claimant's standing/walking was limited to less than 2 hours in an 8-hour workday, noting limited weight bearing on her right foot/leg due to osteomyelitis amputation. There were no limitations on the Claimant's ability to perform repetitive actions with both hands/arms. If the impairment or combination of impairments does not limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. 20 CFR 416.920 In consideration of the Claimant's testimony, medical records, and current limitations, it is found that the Claimant is not able to return to past relevant work therefore the fifth-step in the sequential evaluation process is required.

In Step 5, an assessment of the individual's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v) At the time of hearing, the Claimant [REDACTED] [REDACTED] thus considered to be closely approaching advanced age for MA-P purposes.

The Claimant is also a high school graduate. Disability is found disabled if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from the Claimant to the Department to present proof that the Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983). Individuals approaching advanced age may be significantly limited in vocational adaptability if restricted to sedentary work.

In the record presented, the Claimant's residual functional capacity for work activities on a regular and continuing basis does include the ability to meet at least the physical and mental demands required to perform sedentary work. As noted above, the Claimant, a high school graduate, is approaching advanced age. After review of the entire record and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II) as a guide, specifically Rule 201.12, it is found that the Claimant is disabled for purposes of the MA-P program.

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. PEM 261, p. 1 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. PEM 261, pp 1-2

In this case, because the Claimant was found disabled for the purposes of the MA program, the Claimant is disabled for purposes of the SDA program.

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 February 8, 2008 application to determine if all other non-medical criteria are met and inform the Claimant and her authorized representative 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 accordance department policy in March of 2010.

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

Date Signed: March 3, 2009

Date Mailed: March 9, 2009

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.

CMM

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