

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: 2009-6965  
Issue No: 2009, 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
March 30, 2009  
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted on March 30, 2009 pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department. The undersigned Administrative Law Judge has written the hearing decision after review of the evidence in the record. At the hearing, the Claimant was present and testified. Cheryl Brooks, 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") 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 filed for MA & SDA on 9/4/08.

2. Claimant's impairments are hypertension, Hepatitis C, low back disc disease with possible herniation and polysubstance abuse.
3. Claimant's physical symptoms are pain in right and left leg, pain in hip, pain and numbness in hands and lower back pain.
4. Claimant's mental symptoms are loss of appetite, feeling depressed and tired all the time, loss of concentration, and suicidal thoughts.
5. Claimant is 5'2" tall and weighs 115-120 pounds.
6. Claimant testified to the following physical limitations:
  - Sitting – 1 hour
  - Standing – ½ hour
  - Walking – 2-3 blocks
  - No strength in hand
  - Lifting - 10 lbs.
7. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
8. Claimant is 50 years of age.
9. Claimant completed 9<sup>th</sup> grade in high school and also completed her GED.
10. Claimant was last employed on 7/20/08 as a factory worker where she set and folded cheese clothes. This job required sitting all day long.
11. Claimant has previous employment experience as a waitress and a factory worker.
12. Claimant testified that she performs light household activities such as cooking, clearing the dishes, straightening her room and vacuuming,
13. The Department found that Claimant was not disabled and denied Claimant's application on 10/23/08.
14. Medical records examined are as follows:

██████████, Independent Medical Examination – Neurologist (Exhibit 2)

MOTOR SENSORY EXAMINATION: The right leg is weaker and motor strength is 4/5. The left leg is also weak, 4.5/5.

CONCLUSION: The patient has been suffering from severe lower back pain, possibly disc herniation. This needs to be investigated.

██████████ Internal Medicine Dr. Notes, (Exhibit 4)

Above person getting worse. Possible disc disease. Need MRI, EMG

██████████ ER visit, (Exhibit 2)

The patient is a 50 year old female who presents with a chief complaint of abdominal pain at the back of the epigastric region. Symptoms are characterized as severe in intensity, aching and sharp. The pain radiates to the bilateral back and bilateral flank. The onset was acute and has been occurring for 6 days. Patient cannot eat or drink.

MEDICAL HX: hypertension, hepatitis C, polysubstance abuse. Patient is still actively injecting Heroin, Last time 3 weeks ago.

DX: chronic hepatitis C, hepatitis, intestinal obstruction, pancreatitis, Acute, urinary tract infection.

██████████ MRT Decision (Exhibit 2)

Consultative exam of 6/26/08 reported the claimant has hypertension well controlled. She had back pain, however, her range of motion was normal. Gait was antalgic and she had difficulty with walking on tip toes. Her strength was normal. Back x-ray reported mild degenerative disc disease at L1-2 and L2-3. X-rays of the hips were negative.

Psychiatric evaluation of 8/7/08 reported the claimant to have been feeling depressed for 4-5 months because she can not do the things she use to. Her gait was normal. Her mood was depressed and her affect was appropriate. Diagnosis given was adjustment disorder with depressed mood.

The claimant retains the residual functional capacity to perform a wide range of light work. The claimant's past work as a cashier is light work as it is normally performed. Therefore, the claimant retains the capacity to perform her past relevant work.

██████████ ER Visit (Exhibit 2)

Patient presents with abdominal pain. Vomiting and chronic back pain. Back pain radiates down bilateral side of back and into groin and down legs. No paresthesias or difficulty walking or trauma. Heroin abuse.

██████████ Internal Medicine Medical Exam Report (Exhibit 3, p. 7-8)

PHYSICAL LIMITATIONS:

Lifting less than 10 lbs., occasionally

Standing – less than 2 hrs in 8 hour day  
Sitting – less than 6 hours in 8 hour day

MENTAL LIMITATIONS: None

██████ IME (Exhibit 1)

She has back pain. I suspect that her back pain is the etiology of her right lower extremity pain as she does have a positive straight leg raising today on examination. She has normal range of motion of the back today and normal strength of the lower extremities.

X-ray of the lumbosacral spine, ██████ (Exhibit 1, p. 7)

1. No acute compression fracture.
2. Mild degenerative disk disease at L1-L2 and L2-L3.

██████ psychiatric IME (Exhibit 1, pp. 8-11)

DIAGNOSIS: Adjustment Disorder with depressed mood. Mood Disorder due to Axis 3 diagnosis (Hypertension, back pain, hip pain and leg pain)

GAF 55

PROGNOSIS: Fair to guarded

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 Claimant last worked on 7/20/08 for a temporary service. That position lasted over three months. Claimant is not currently engaged in substantial gainful activity. 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 (6<sup>th</sup> 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 (6<sup>th</sup> Cir. 1988); *Farris v Sec’y of Health & Human Servs*, 773 F.2d 85, 90 (6<sup>th</sup> Cir. 1985).

In this case, the Claimant has presented medical evidence of hypertension, hepatitis C, pancreatitis, possible disc herniation and adjustment disorder. While the only objective test result regarding the back impairment is an x-ray showing mild degenerative disc disease at L1-2

and L2-3, Claimant also exhibited a positive straight leg raise on 6/26/08, unequal weakness in the legs and pain that radiates into her lower extremities. Furthermore, the independent neurologist acknowledged that there is a possible disc herniation. As a result of these impairments, Claimant has been placed on physical restrictions by her internist of lifting less than 10 lbs., standing less than 2 hours per day and sitting less than 6 hours per day. Therefore, the medical evidence has established that Claimant has a physical impairment that has more than a minimal effect on basic work activities. Claimant's impairments have lasted continuously for more than twelve months or can be expected to last more than twelve months.

However, the medical records also establish heroine abuse. 20 CFR 416.935 requires a determination of whether drug addiction or alcoholism is a contributing factor material to the determination of disability through the factors of 20 CFR 416.935(a) through (2) (ii). The evaluation used is as follows:

- (1) Determine which physical and mental limitations would remain if Claimant stopped using drugs or alcohol.
- (2) If remaining limitations would not be disabling, drug addiction or alcoholism is a contributing factor material to a determination of disability.
- (3) If remaining limitations are disabling independent of drug addiction or alcoholism, substance abuse is not a contributing factor material to a determination of disability.

Claimant's impairments of hypertension, possible disc herniation and adjustment disorder are not related to the substance abuse. Any of these impairments could be considered disabling. Therefore, Claimant's impairments will be evaluated under steps three through five below.

### **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 (Listing) discusses the analysis and criteria necessary to a finding of a listed impairment. The Listings 1.04 *Disorders of the spine* and 12.04 *Affective Disorders* were reviewed. 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 physical and mental impairments do not meet the intent or severity of the listings.

#### **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's previous employment experience includes light production and waitressing, both of which would be classified as unskilled, light work. Considering the physical restrictions placed on Claimant by her internist, Claimant is limited to sedentary work only. Based on this information, the undersigned finds the Claimant 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 functionally at the limits of 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 (50) 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, 9<sup>th</sup> grade education, and prior work experience of unskilled work, Claimant is disabled for the purposes of the programs by the social security tables. 20 CFR 404, Subpart P, Appendix 2, Table 1, Rule 201.09.

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 program.

#### 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 program as of 9/4/08.

Therefore the department is ORDERED to initiate a review of the application of September 4, 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 May, 2010.

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

Date Signed: 06/04/09

Date Mailed: 06/05/09

**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:

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