

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: 2009-7510

Issue No: 2009, 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 1, 2009

Livingston County DHS

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on April 1, 2009. Claimant appeared and testified.

ISSUES

Did the Department of Human Services properly deny Claimant's application for Medical Assistance (MA) based on disability?

Did the Department of Human Services properly deny Claimant's application for State Disability Assistance (SDA)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) Claimant is a 52 year old female. Claimant is 64 inches tall and weighs

approximately 190 pounds. Claimant's formal education consists of 9 years of school and obtaining a GED.

(2) Claimant has past relevant work in food services as a cook, waitress, and manager as well as unskilled general labor.

(3) Claimant has a history of passing out and going to the hospital, being prescribed anti-depression medication, cervical spine fusion, and drug abuse. Claimant asserts disability based on seizures, hepatitis C, closed head injury, and neck damage.

(4) Claimant last worked in March 2008 as a cook. Claimant reports she left that employment because she felt afraid.

(5) On March 28, 2008, Claimant applied for Medical Assistance (MA) based on disability and State Disability Assistance (SDA).

(6) On October 31, 2008, the Department of Human Services Medical Review Team determined that Claimant was not disabled in accordance with the standards for Medical Assistance (MA) or State Disability Assistance (SDA).

(7) On November 5, 2008, Claimant was sent notice of the Department's determination.

(8) On November 12, 2008, Claimant submitted a request for hearing.

(9) On January 7, 2009, the Department of Human Services State Hearing Review Team determined that Claimant was not disabled in accordance with the standards for Medical Assistance (MA) or State Disability Assistance (SDA).

(10) At this hearing Claimant waived time limits in order to submitted additional evidence.

(11) On April 14, 2009, all evidence was submitted to the Department of Human

Services State Hearing Review Team.

(12) On April 27, 2009, the Department of Human Services State Hearing Review Team determined that Claimant was not disabled in accordance with the standards for Medical Assistance (MA) or State Disability Assistance (SDA).

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 400.10, *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).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *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).

Disability determinations done by the State of Michigan for Medical Assistance (MA) based on disability use the Social Security Administration standards found in United States Code of Federal Regulations (CFR) at Title 20, Part 416. The law defines disability 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 at least 12 months. To meet this definition, you must have severe

impairments that make you unable to do your past relevant work or any other substantial gainful work that exists in the national economy.

Disability determinations done by the State of Michigan, for State Disability Assistance (SDA), use the same standards with one minor difference. For State Disability Assistance (SDA) the medically determinable physical or mental impairments that prevent substantial gainful activity must result in death or last at least 90 days.

In accordance with the Federal Regulations an initial disability determination is a sequential evaluation process. The evaluation consists of five steps that are followed in a set order.

At step 1, a determination is made on whether Claimant's is engaging in 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. Gainful work activity is work activity that you do for pay or profit (20 CFR 416.972). If you are engaged in SGA, you are not disabled regardless of how severe your physical or mental impairments are and regardless of your age, education, and work experience.

Claimant last worked in March 2008 as a cook. Claimant testified that she currently spends almost every day at home and just does the absolute minimum of house work and cooking to get by. Claimant is not engaged in substantial gainful activity because she is not receiving any pay or profit for her activities.

At the second step it is determined whether you have a medically determined impairment that is severe or a combination of impairments that is severe (20CFR 416.920(c)). An impairment or combination of impairments is severe within the meaning of the regulations if it

significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is not severe when medical and other evidence establishes only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work (20 CFR 416.921). If your medically determinable impairments are not severe you are not disabled.

Claimant asserts disability based upon seizures, hepatitis C, closed head injury, and neck damage. Relevant evidence in the record from medical sources includes:

There are records from an Emergency Room visit on [REDACTED]. (Pages A95-A102) Claimant was seen, her previous hospitalization records were reviewed, and she was monitored and then discharged when she felt better. [REDACTED] recorded "the risk factor is IV-IM drug abuse."

There is a physical examination report from a follow up visit with [REDACTED] dated February 25, 2009. (Pages A25 & A26) [REDACTED] is a neurologist and has been treating Claimant since April 2008. The follow up visit was after Claimant was hospitalized on February 4, 2009, the most recent of 5 syncopal episodes since August 2008. [REDACTED] had the impression that Claimant had amitriptyline toxicity. Claimant had taken too much of the [REDACTED] prescribed by her psychiatrist.

There is documentation of a Claimant's hospital stay between February 4 & 6, 2009. (Pages 60-74) During the hospital stay X-rays were done of Claimant's knee and chest as well as CT scans of the brain, cervical spine, and thoracic spine. No abnormalities were found in the X-rays. The CT scan of Claimant's brain and skull were normal and consistent with a previous scan of the brain from January 5, 2009. The CT scan of Claimant's spine showed surgical fusion of C4-C6 and degenerative change between C6 and C7. There were no other abnormalities and

the CT scan of the spine was consistent with a previous scan of the spine from January 5, 2009. No specific medical reason was determined for Claimant's syncope. Her urine drug screen showed toxic levels of combined amitriptyline and nortriptyline and tested positive for opiates.

There is a physical examination report from [REDACTED] on February 2, 2009. (Pages A21 & A22) The Doctor did a repeat EEG and it was another normal study. The Doctor noted that Claimant was on a significant amount of anti-depressant medication and was taking a lot of pain medication.

There is a physical examination report from [REDACTED] on October 31, 2008. (Pages A28 & A29) The Doctor reported that a recent brain MRI study was normal. The report states that Claimant has paroxysmal positional vertigo and was prescribed Antivert. The Doctor also reported "The patient agrees to take no more than two Norco a day for her chronic pain issues. We will sign the contract with the patient later and may do random urine drug screens."

There is a Medical Examination Report DHS-49 form completed by [REDACTED] on October 2, 2008. (Pages 189 & 190) The Doctor recommended a complete restriction of any physical work activity, on a temporary basis with re-evaluation in October 2008. The Doctor based his recommendation on the 8/13/08 CT scan of Claimant's cervical spine. The Doctor indicated that Claimant had no mental limitations.

There is a physical examination report from [REDACTED] on September 17, 2008. (Pages A30 & A31) The Doctor had the impression that Claimant suffers from vertigo. The Doctor also reported "We had a long discussion regarding narcotic medication usage again. . . It is inappropriate for her to use three or four tablets of Norco a day. . . I also prefer that she discuss narcotic medication usage with the Pain Clinic Doctor and maybe they can take over her narcotic medication prescription from now on."

There is a physical examination report from [REDACTED] on August 18, 2008. (Pages A32-A34) The Doctor had the impression that Claimant's recent passing out spells could be due to dehydration. The Doctor reported "I have expressed my concerns to her regarding her chronic use of narcotic medications."

There are hospital records of Claimant's admission between August 13, 2008 and August 15, 2008. (Pages 115-152) Claimant was admitted after being found face down outside the local library. During the stay Claimant was consulted by [REDACTED] of the neurology department because Claimant was known to that department for seizures. Claimant's drug screen showed positive for [REDACTED] and when asked about the results Claimant stated she had not taken any valium or valium like compounds. [REDACTED] felt Claimant was seeking to stay on narcotics and recommended substance abuse treatment as an out patient. CT scans were done of Claimant's brain, cervical spine, and thoracic spine. The scans showed: no acute intracranial injury; fusion of C4-C6; spondylotic changes most prominent at C6-C7; and postoperative and degenerative changes of the spine.

There is a Medical Examination Report (form DHS-49) from [REDACTED] dated April 10, 2008. (Pages 8 & 9) [REDACTED] specializes in internal medicine and first saw Claimant on March 25, 2008. The Doctor diagnosed Claimant with chronic ongoing neck and back pain. The Doctor had the clinical impression that Claimant was deteriorating because Claimant reported the pain was getting worse. The Doctor recommended physical limitations based on Claimant's neck and back pain. The Doctor noted that Claimant had significant mental limitations.

CFR 416.921 defines a non-severe impairment. An impairment or combination of impairments is not severe if it does not significantly limit your physical or mental ability to do

basic work activities. When we talk about basic work activities, we mean the abilities and aptitudes necessary to do most jobs. Examples of these 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.

In this case there is no objective medical evidence in the record which shows that Claimant actually has seizures. There is no objective medical evidence in the record which shows that Claimant has any limitations in her mental ability to do basic work activities. There is objective medical evidence that shows Claimant has had fusion in her cervical spine and has degenerative changes in her cervical spine. The condition of Claimant's cervical spine has lasted for more than 12 months and would limit her physical ability to do basic work activities.

At the third step it is determined whether your impairments meet or equal the criteria of an impairment listed in a Social Security Administration impairment listing 20 CFR Part 404, Subpart P, Appendix 1. If your impairment meets or equals the criteria of a listing and meets the duration requirement, you are disabled.

Claimant's spinal impairment was compared with the Social Security Administration impairment listing. That listing is:

1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine);

or

B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours;

or

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

Claimant's spinal impairment does not meet or equal this listings because there is no objective medical evidence which shows nerve root compression.

At the fourth step we assess your residual functional capacity to determine if you are still able to perform work you have done in the past. Your residual functional capacity is your ability to do physical and mental work activities on a sustained basis despite limitations from your impairments. Your residual functional capacity is assessed using all the relevant evidence in the record. If you can still do your past relevant work you are not disabled under these standards.

Claimant reports past relevant work in food services as a cook, waitress, and manager as well as unskilled general labor. At this hearing Claimant specifically asserted she cannot work because of her seizures. While Claimant has gone to the hospital numerous times after passing out, there is no objective medical evidence in the record that Claimant has seizures. The

collective medical evidence in the record indicates that Claimant passes out from one, or a combination of, prescription drug abuse, dehydration, or vertigo.

There is objective medical evidence in the record that Claimant has conditions in her cervical spine that would limit her physical ability and could reasonably be expected to produce the pain Claimant alleges. The record contains medical source opinions regarding physical limitations from both [REDACTED] and [REDACTED] [REDACTED] had a treating relationship with Claimant at the time he gave his temporary, total physical limitation recommendation. However, [REDACTED] recommendation is not consistent with the CT scans of Claimant's spine. [REDACTED] also specified the recommended restrictions were temporary until re-evaluation in October 2008. There is no further opinion from [REDACTED] in the record on physical restrictions for Claimant. [REDACTED] [REDACTED] did not have a very long treating relationship with Claimant when he gave his recommendation for physical work restrictions. However, [REDACTED] physical restriction recommendations are consistent with the objective medical evidence in the record and will be given controlling weight.

Classifications of work based on physical exertion requirements are defined in 20 CFR 416.967.

- (a) *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.
- (b) *Light work.* Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the 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. To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

- (c) *Medium work.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work.
- (d) *Heavy work.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work.

Using [REDACTED] physical restriction recommendations, Claimant has the residual functional capacity to perform light work and sedentary work. All of Claimant's past relevant work in food services would fall within the bounds of light work. Claimant is not disabled because she is capable of performing her past relevant work. In order to perform a complete assessment of Claimant's asserted disability this evaluation will continue.

At the fifth step your residual functional capacity (RFC) is considered along with your age, education, and work experience to see if you can make an adjustment to other work you have not previously done. If you have a combination of sufficient remaining abilities and transferable skills to adjust to other work, you are not disabled. If it is determined that you cannot make an adjustment to other work, we will find that you are disabled.

Claimant is: 53 years old; has nine years of formal schooling and completed a GED; has a work history of unskilled work; and the residual functional capacity to perform light work.

Age is one of the aspects of your vocational profile considered in this step. The following age categories are established in 20 CFR 416.963 for use in the Social Security Administration Medical-Vocational Guidelines.

A younger person is under age 50. If you are a younger person we generally do not consider that your age will seriously affect your ability to adjust to other work. However, in some circumstances, we consider that persons age 45-49 are more limited in their ability to adjust to other work than persons who have not attained age 45.

A person closely approaching advanced age is 50-54 years old. If you are closely approaching advanced age, we will consider that your age along with a severe impairment(s) and limited work experience may seriously affect your ability to adjust to other work.

A person of advanced age is over 55. We consider that at advanced age, age significantly affects a person's ability to adjust to other work. We have special rules for persons of advanced age and for persons in this category who are closely approaching retirement age (age 60-64).

Education is another aspects of your vocational profile considered in this step. The following categories of education are established in 20 CFR 416.964 for use in the Social Security Administration Medical-Vocational Guidelines.

- (1) *Illiteracy.* Illiteracy means the inability to read or write. We consider someone illiterate if the person cannot read or write a simple message such as instructions or inventory lists even though the person can sign his or her name. Generally, an illiterate person has had little or no formal schooling.
- (2) *Marginal education.* Marginal education means ability in reasoning, arithmetic, and language skills which are needed to do simple, unskilled types of jobs. We generally consider that formal schooling at a 6th grade level or less is a marginal education.
- (3) *Limited education.* Limited education means ability in reasoning, arithmetic, and language skills, but not enough to allow a person with these educational qualifications to do most of the more complex job duties needed in semi-

skilled or skilled jobs. We generally consider that a 7th grade through the 11th grade level of formal education is a limited education.

- (4) High school education and above. High school education and above means abilities in reasoning, arithmetic, and language skills acquired through formal schooling at a 12th grade level or above. We generally consider that someone with these educational abilities can do semi-skilled through skilled work.
- (5) Inability to communicate in English. Since the ability to speak, read and understand English is generally learned or increased at school, we may consider this an educational factor. Because English is the dominant language of the country, it may be difficult for someone who doesn't speak and understand English to do a job, regardless of the amount of education the person may have in another language. Therefore, we consider a person's ability to communicate in English when we evaluate what work, if any, he or she can do. It generally doesn't matter what other language a person may be fluent in.

Work skills are another aspects of your vocational profile considered in this step. The following categories of work skills are established in 20 CFR 416.968 for use in the Social Security Administration Medical-Vocational Guidelines.

In order to evaluate your skills and to help determine the existence in the national economy of work you are able to do, occupations are classified as unskilled, semi-skilled, and skilled. In classifying these occupations, we use materials published by the Department of Labor. When we make disability determinations under this subpart, we use the following definitions:

- (a) *Unskilled work.* Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength. For example, we consider jobs unskilled if the primary work duties are handling, feeding and offbearing (that is, placing or removing materials from machines which are automatic or operated by others), or machine tending, and a person can usually learn to do the job in 30 days, and little specific vocational preparation and judgment are

needed. A person does not gain work skills by doing unskilled jobs.

- (b) Semi-skilled work. Semi-skilled work is work which needs some skills but does not require doing the more complex work duties. Semi-skilled jobs may require alertness and close attention to watching machine processes; or inspecting, testing or otherwise looking for irregularities; or tending or guarding equipment, property, materials, or persons against loss, damage or injury; or other types of activities which are similarly less complex than skilled work, but more complex than unskilled work. A job may be classified as semi-skilled where coordination and dexterity are necessary, as when hands or feet must be moved quickly to do repetitive tasks.
- (c) Skilled work. Skilled work requires qualifications in which a person uses judgment to determine the machine and manual operations to be performed in order to obtain the proper form, quality, or quantity of material to be produced. Skilled work may require laying out work, estimating quality, determining the suitability and needed quantities of materials, making precise measurements, reading blueprints or other specifications, or making necessary computations or mechanical adjustments to control or regulate the work. Other skilled jobs may require dealing with people, facts, or figures or abstract ideas at a high level of complexity.

The Social Security Administration Medical-Vocational Guidelines are divided into categories based on the maximum sustained work capability a person still has. In this case Claimant has the residual functional capacity to perform light work, is classified as a person closely approaching advanced age, and has an unskilled work history. While Claimant completed a GED she only attended 9 years of school and testified that she has difficulty with reading and writing. For this analysis Claimant will be considered to have a limited education. Rule 202.10 dictates that a person with this vocational profile is not disabled.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services properly denied Claimant's application for Medical Assistance (MA) based on disability and State Disability Assistance (SDA).

It is ORDERED that the actions of the Department of Human Services, in this matter, are UPHELD.

/s/

Gary F. Heisler
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 13, 2010

Date Mailed: April 13, 2010

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.

GFH/alc

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