

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: 2009-8178
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 2, 2009
St Clair 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 hearing was held on April 2, 2009. Claimant appeared and testified.

ISSUES

- (1) Did the Department of Human Services properly determine that Claimant is not disabled and deny Claimant's application for Medical Assistance (MA) based on disability?
- (2) Did the Department of Human Services properly determine that Claimant is not disabled and 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 49 year-old female. Claimant is 68 inches tall and weighs approximately 160 pounds. Claimant's formal education consists of 12 years of school.

(2) Claimant has past relevant work as a dog groomer.

(3) Claimant last worked in April, 2008 as a dog groomer. Claimant reports she left that employment because of arthritis pain and breathing problems.

(4) On September 22, 2008, Claimant applied for Medical Assistance (MA) based on disability and State Disability Assistance (SDA).

(5) On October 29, 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).

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

(7) On November 21, 2008, Claimant submitted a request for hearing.

(8) On July 17, 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.

STEP 1

At this step, 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 testified that she has not worked since April, 2008 when she was a self-employed dog groomer. Claimant testified that she currently spends her days doing minimal upkeep in her home and tending to her five dogs and three cats with assistance from her neighbors. Claimant is not engaged in substantial gainful activity because she does not receive any pay or profit from her activities. Claimant is not found ineligible at this step.

STEP 2

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). In addition to the limiting effect of the impairments they must also meet durational requirements, 90 days for State Disability Assistance (SDA) and 12 months for Medical Assistance (MA) based on disability. If your medically determinable impairments are not severe you are not disabled.

Claimant asserts disability based upon arthritis, shortness of breath, and depression. Claimant reports she was involved in a motorcycle accident more than 20 years ago which broke a large number of bones on her left side. Claimant reports she had reconstructive surgery for her left leg and foot and it took almost a year before she was able to walk again. In March, 2007

Claimant had ligament reconstruction surgery in her left knee. Claimant also reports she has seizures but her last one was 15 years ago. Current, relevant evidence from medical sources is summarized below.

On [REDACTED] Claimant had x-rays after a fall. [REDACTED] examined the x-rays and concluded that Claimant had a normal left shoulder, normal left clavicle, and mild degenerative and discogenic disease at the C5-C6 level.

The Medical Examination Report (form DHS-49) filled out by [REDACTED] is dated [REDACTED]. It lists the current diagnosis as degenerative arthritis affecting the knee, hip and spine. It also lists Raynaud's disease as a diagnosis. In the physical limitation section [REDACTED] marked lifting restrictions of never more than 10 pounds and less than 10 pounds only occasionally. There are standing/walking restrictions of less than 2 hours in an 8 hour day. In the repetitive action section the Doctor completely restricted reaching, pushing/pulling, and operating foot/leg controls. The Doctor also marked that Claimant requires a quad cane for ambulation. [REDACTED] noted on the form that he has been treating Claimant since March 1992.

[REDACTED] also completed a Medical Needs Form (DHS-54a) for Claimant on [REDACTED]. The Doctor marked the form indicating that Claimant is ambulatory, does not need special transportation, and does not need anyone to accompany her to medical appointments. [REDACTED] marked the form indicating that Claimant does not need assistance with transferring, mobility, meal preparation, shopping, laundry, or housework. The Doctor marked the form indicating that Claimant requires a total knee replaced and can not work any job until surgical repair is done.

On [REDACTED], Claimant had a pulmonary function test. The interpretation was normal.

On [REDACTED] Claimant was examined by [REDACTED] of Michigan Medical Consultants. The Doctor observed that Claimant was in obvious distress when walking and walked with a mild left-sided limp without the use of an assistive device. The Doctor determined that Claimant had reduced range of motion in both knees and the lumbar spine, had no difficulty heel walking, severe difficulty walking on her toes, mild difficulty squatting halfway and arising, and was unable to hop. The Doctor concluded that Claimant has degenerative joint disease which is secondary to a motorcycle accident a quarter of a century ago. Claimant has a degree of instability when she walks reflecting the lack of stability of the left leg.

On [REDACTED], Claimant was evaluated by [REDACTED] of Associates in [REDACTED]. The Doctor diagnosed Claimant with Bipolar I Disorder and Alcohol Dependence. The only abnormal determination was that Claimant's formal judgment is impaired.

Claimant has severe impairments because they limit her ability to do basic work activities. Claimant's physical impairments have persisted for many years and meet the duration requirements under these standards. Claimant is found neither disabled nor ineligible at this step.

STEP 3

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 asserts disability based upon arthritis, shortness of breath, and depression.

Claimant's asserted impairments were compared with the Social Security Administration

impairment listings 1.02, 3.02, and 12.04. Those listings are discussed below.

1.02 Major dysfunction of a joint(s) (due to any cause): Characterized by gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:

A. Involvement of one major peripheral weight-bearing joint (*i.e.*, hip, knee, or ankle), resulting in inability to ambulate effectively, as defined in 1.00B2b;

1.00 Musculoskeletal System

A. Disorders of the musculoskeletal system. . .

B. Loss of function.

1. General.

2. How We Define Loss of Function in These Listings

a. General.

b. What We Mean by Inability To Ambulate Effectively

(1) Definition. Inability to ambulate effectively means an extreme limitation of the ability to walk; *i.e.*, an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. Ineffective ambulation is defined generally as having insufficient lower extremity functioning (see 1.00J) to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities. (Listing 1.05C is an exception to this general definition because the individual has the use of only one upper extremity due to amputation of a hand.)

(2) To ambulate effectively, individuals must be capable of sustaining a reasonable walking pace over a sufficient distance to be able to carry out activities of daily living. They must have the ability to travel without companion assistance to and from a place of employment or school. Therefore, examples of ineffective ambulation include, but are not limited to, the inability to walk

without the use of a walker, two crutches or two canes, the inability to walk a block at a reasonable pace on rough or uneven surfaces, the inability to use standard public transportation, the inability to carry out routine ambulatory activities, such as shopping and banking, and the inability to climb a few steps at a reasonable pace with the use of a single hand rail. The ability to walk independently about one's home without the use of assistive devices does not, in and of itself, constitute effective ambulation.

In this case, Claimant's treating physician, [REDACTED] indicated on the Medical Needs Form (DHS-54a) dated 9/29/08 that Claimant is ambulatory, does not need special transportation, does not need anyone to accompany her to medical appointments and does not need assistance with transferring, mobility, meal preparation, shopping, laundry, or housework. Claimant's medically determined physical impairment does not meet or equal this listing.

3.02 Chronic pulmonary insufficiency.

A. Chronic obstructive pulmonary disease, due to any cause, with the FEV₁ equal to or less than the values specified in table I corresponding to the person's height without shoes.

Table I		
Height without shoes (centimeters)	Height without shoes (inches)	FEV ₁ equal to or less than (L, BTPS)
154 or less	60 or less	1.05
155-160	61-63	1.15
161-165	64-65	1.25
166-170	66-67	1.35
171-175	68-69	1.45
176-180	70-71	1.55
181 or more	72 or more	1.65

Or

B. Chronic restrictive ventilatory disease, due to any cause, with the FVC equal to or less than the values specified in table II corresponding to the person's height without shoes.

Table II		
Height without shoes (centimeters)	Height without shoes (inches)	FVC equal to or less than (L, BTPS)
154 or less	60 or less	1.25
155-160	61-63	1.35
161-165	64-65	1.45
166-170	66-67	1.55
171-175	68-69	1.65
176-180	70-71	1.75
181 or more	72 or more	1.85

Claimant is 68 inches tall. Her pulmonary function test dated [REDACTED] showed an FEV₁ (one-second forced expiratory volume) of 2.39. The table in A above shows an FEV₁ cut off for a person of 68 inches as 1.45. Claimant's FVC (forced vital capacity) on 3/30/09 was 2.96. The table in B above shows an FVC cut off for a person of 68 inches as 1.65. Claimant's pulmonary limitation does not meet or equal this listing.

12.04 Affective Disorders: Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation.

The required level of severity for these disorders are met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes);

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Marked difficulties in maintaining concentration, persistence, or pace; or
4. Repeated episodes of decompensation, each of extended duration;

OR

C. Medically documented history of a chronic affective disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration; or
2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

The evidentiary record contains no documentation that Claimant's bipolar disorder has resulted in this level of impact. Claimant's mental limitation does not meet or equal this listing.

STEP 4

At the fourth step, we assess your residual functional capacity (RFC) to determine if you are still able to perform work you have done in the past. Your RFC is your ability to do physical and mental work activities on a sustained basis despite limitations from your impairments. Your

RFC 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 as a dog groomer. At this hearing Claimant specifically asserted she cannot work because of pain in her legs and breathing problems.

On [REDACTED], [REDACTED], Claimant's treating physician, completed a Medical Examination Report (form DHS-49). In the physical limitation section [REDACTED] marked lifting restrictions of never more than 10 pounds and less than 10 pounds only occasionally. There are standing/walking restrictions of less than 2 hours in an 8 hour day. In the repetitive action section the Doctor completely restricted reaching, pushing/pulling, and operating foot/leg controls. The Doctor also marked that Claimant requires a quadcane for ambulation. [REDACTED] noted on the form that he has been treating Claimant since March, 1992.

Claimant had a normal pulmonary function test on [REDACTED]. Claimant had no mental limitations determined during a psychological examination on [REDACTED].

In accordance with 20 CFR 416.967 Claimant has the RFC to perform sedentary work. Claimant's past relevant work as a dog groomer would require the physical management of any breed of dog from Chihuahua to Great Dane. Claimant is not able to perform her past relevant work as a dog groomer because lifting and controlling medium and larger breeds of dogs would require lifting and carrying more than 10 pounds and repetitive actions of reaching, pushing, and pulling.

STEP 5

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 49 years-old with a high school education. Claimant received a diploma and certification from the [REDACTED] and has 20 years experience as a dog groomer. Claimant's work experience is considered skilled or semi-skilled which is not transferable. As determined at Step 4, and in accordance with 20 CFR 416.967, Claimant has the RFC to perform sedentary work.

Using Social Security Administration Medical-Vocational Guidelines rule 201.21 as a guide, Claimant is able to adjust to other work and 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 determined that Claimant is not disabled and 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: August 31, 2009

Date Mailed: September 1, 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 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 

cc:

