

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.: 201010869

Issue No.: 2009, 4031

Case No.:

Load No.:

Hearing Date:

February 22, 2010

Macomb County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted by a telephone hearing on February, 22, 2010 pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department on November 9, 2009. At the hearing, the Claimant was present and testified.

[REDACTED], ES appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA") and State Disability Assistance ("SDA") 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. Claimant applied for SDA and MA as of September 23, 2009.
2. Claimant is 5'3" tall and weighs 138 pounds.
3. Claimant is right handed.

4. Claimant is 28 years of age. DOB: 6/6/1981
5. Claimant's impairments have been medically diagnosed as seizures, headaches and bilateral carpal tunnel, cyst on pineal gland, right knee problems and gastritis.
6. Claimant's physical symptoms are uncontrollable jerks in legs (2-3x/day, legs get really weak and can walk, but not well – does not prevent her from sitting); severe headaches (not bothered by light or sound but so severe that she wants to curl up in a ball, currently on Indosin, 4-5x/day lasting one hour to all day); wrist pain and numbness in hands (difficulty picking things up or holding onto things), right knee turns in and causes severe pain down leg, limitations standing; severe pain in stomach and vomits blood 1-2x/year.
7. Claimant is not claiming any mental symptoms
8. Claimant takes the following prescriptions (side effects):
 - a) Depakote 500 mg 3x/day – seizures
 - b) Topamax 100 mg 2x/day – headaches and tremors (side effects of Dapakote)
 - c) Indosin 25 mg 3x/day – headaches and inflammation in knee
 - d) Depakote Extended release 250 mg
 - e) No pain medication
9. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
10. Claimant has a high school education. Claimant is currently attending Baker College – working towards auto body technician (2-3 years program). Claimant is currently in her second semester, 1st year although she has not gotten into the technical part of course yet. Claimant has difficulty writing, specifically holding apencil. She also has pain in her wrists when she types.
11. Claimant is able to read, write and perform basic math skills.
12. Claimant last worked as a cashier at [REDACTED] in 2007. Claimant was required to stand, take orders and make food, bending and stooping was required. Claimant had to lift 25-50 lbs. Claimant left because she could not stand long enough.
13. Claimant has prior employment experience as waitressing (standing, minimal lifting); shoe sales (bending/stooping, being on feet, no lifting); deli department (standing, occasional lifting up to 20-30 lbs).

14. Claimant testified to the following physical limitations:
 - Sitting: 10-15 min. at time
 - Standing: CI can sit 1 hr, 40 min. during class with adjustments
 - Walking: less than a block slowly with a limp
 - Bend/stoop: Cannot get back up if she bends or stoops
 - Lifting: 10 lbs sometimes
 - Grip/grasp: yes
15. Claimant performs household chores such as laundry and vacuuming, preparation of meals (sandwiches, steak & chicken), grocery shopping, takes out trash. Claimant's roommate does the dishes and cleans the bathrooms.
16. Claimant wears a brace on her wrist and knee.
17. Claimant used to swim on team in H.S. Claimant is still able to swim in her parent's pool during the summer. Claimant does plastic canvas (like needle point) but now has difficulty holding onto canvas and needle so just does it around the Holidays. Claimant likes to fish in the summer up north with a little rowboat. Claimant testified that she cannot cast anymore or she will drop pole, so she just drops line in water and lets it drift out. Sometimes Claimant is able to reel the fish in.
18. The Department found that Claimant was not disabled and denied Claimant's application on November 5, 2009.
19. The hearing record was left open to allow Claimant to provide residual functional capacity evaluations from Dr. [REDACTED] and Dr. [REDACTED]. Only the DHS 49 from Dr. [REDACTED] was submitted.
20. Medical records examined are as follows:

3/15/10 Orthopedic Surgeon Medical Exam Report (Exhibit A)

HX: Carpal tunnel syndrome (bilaterally), chondromalacia right patella

PHYSICAL LIMITATIONS: Lifting 10 lbs frequently and 25 lbs occasionally, Stand/walk about 6 hours in an 8 hour day, sit less than 6 hours in an 8 hour day. Okay for all grasping, reaching, pushing/pulling, and fine manipulating. No mental limitations.

4/27/09 Neurologist report (Exhibit 2, p. 1)

COMPLAINTS: pain and numbness and clumsiness of hands since 2000

TESTS: EMG within normal limits, Nerve conduction latency studies within normal limits

COMMENT: Patient's symptomatology is compatible with bilateral carpal tunnel syndrome although this is not evident on elecropsiological testing. Wd treat patient with wrist braces and consider carpal tunnel nerve blocks.

8/6/09 Neurosurgeon Report (Exhibit 2, p. 2)

Post neuroplasty of median nerve at the wrist on right side on 6/26/09. Sending her for occupational and physical therapy.

History of seizures (in legs only)

1st seizure – 9/1/08

Last seizure – 10/23/09

- happens when she stands too long

9/25/09 – SSA Physical RFC Assessment (Exhibit 1, pp. 8-15)

No physical exertional limitations

2/10/09 – Neurologist Report (Exhibit 1, p. 13)

Polymyoclonia well controlled with Dapakote 250 mgs 3x/day and Dapakote 250 ER at bedtime. Recently myoclonus has reemerged in legs and hands with tremulousness of lower extremities. In the hands it starts with a mild tremor and proceeds to a myoclonic jerk. Pt also had a reemergence of her chronic daily headaches which are stabbing and vertex in location. Scheduled for EMG and increase in medication.

3/2/09 – Neurologist Report (Exhibit 1, p. 15)

Myoclonic jerks have mostly dissipated, however, the patient still continues to have intermittent tremulousness of the lower extremities with standing, sitting and supine.

9/29/08 – Neurologist Report (Exhibit 1, p. 12)

Pt complains of “twitches in legs” occurring during waking and sleeping hours along with pain in lower extremity bilaterally, weakness and coldness in lower extremities.

10/8/08 – Neurologist report (Exhibit 1, p. 9)

EEG was abnormal in relationship to the discharge associated with leg movements of a segmental myoclonus type. CT scan of brain was normal.

8/6/02

MRI for persistent headache: Evidence of a cystic pineal structure, approximately 8 mm in diameter.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.1 *et*

seq., and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Federal regulations require that the department use the same operative definition for “disabled” as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

“Disability” is:

. . . the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months . . . 20 CFR416.905

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity; the severity of impairment(s); residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. A determination that an individual is disabled can be made at any step in the sequential evaluation. Then evaluation under a subsequent step is not necessary.

1. Current Substantial Gainful Activity

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. “Substantial work activity” is work activity that involves doing significant physical or mental activities. 20 CFR 416.972(a). “Gainful work activity” is work that is usually done for pay or profit, whether or not a profit is realized. 20 CFR 416.972(b). Generally if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that she has the demonstrated ability to engage in SGA. 20 CFR 416.974 and 416.975. If an individual engages in SGA, she is

not disabled regardless of how severe her physical and mental impairments are and regardless of her age, education and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step. In this case, under the first step, the Claimant worked in 2007. 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 F2d 685 (6th Cir 1985) held that an impairment qualifies as “non-severe” only if it “would not affect the claimant’s ability to work,” “regardless of the claimant’s age, education, or prior work experience.” *Id.* At 691-92. Only slight abnormalities that minimally affect a claimant’s ability

to work can be considered non-severe. *Higgs v Bowen*, 880 F.2d 860, 862 (6th Cir. 1988); *Farris v Sec’y of Health & Human Servs*, 773 F.2d 85, 90 (6th Cir. 1985).

In this case, the Claimant has presented medical evidence of bilateral carpal tunnel syndrome, myoclonus with tremulousness of lower extremities, and chronic daily headaches. The medical evidence has established that Claimant has a physical impairment that has more than a minimal effect on basic work activities; and Claimant’s impairments have lasted continuously for more than twelve months.

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 1.01 *Major dysfunction of a joint* was reviewed. For a wrist-hand disability listing, an “inability to perform fine and gross movements effectively” is required. 20 CFR 404, Appendix 1 of Subpart P, Rule 1.02(B). To be effective, “individuals must be capable of sustaining such functions as reaching, pushing, pulling, grasping, and fingering to be able to carry out activities of daily living.” 20 CFR 404, Appendix 1 of Subpart P, Rule 1.00(b)(2). In this matter, the medical records establish a diagnosis of bilateral carpal tunnel syndrome. However, both Claimant’s orthopedic surgeon and the SSA medical

examiner found no physical limitations regarding Claimant's ability to push, pull, grasp or fine motor skills. Furthermore, Claimant is able to complete activities of daily living.

The listing 11.14 *Peripheral neuropathies* was also reviewed. The assessment of impairment for this listing "depends on the degree of interference with locomotion and/or interference with the use of fingers, hands and arms." 20 CFR 404, Appendix 1 of Subpart P, Rule 11.00C. In this case, the evidence did not reveal any medical support for interference with Claimant's locomotion or interference with her hand/finger use. Therefore, 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 impairment does 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 was classified as unskilled, light/medium work. Light work requires lifting up to 20 lbs. occasionally and a good deal of walking or standing. Claimant testified that she is able to lift 10 lbs. on occasion. Claimant's orthopedic surgeon, however, restricted Claimant to lifting 10 lbs. frequently and up to 25 lbs. on occasion. Claimant's orthopedic surgeon found that Claimant was also able to stand and walk up to six hours in an

eight hour day. Giving Claimant the benefit of the doubt, however, based on her testimony, this Administrative Law Judge finds that Claimant is limited to sedentary work and would be unable to return to her previously held jobs. Therefore, the evaluation will continue at step five.

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 limited to sedentary work. Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines 20 CFR 416.967(a) describes sedentary work:

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Claimant at forty-five is considered a *younger individual*.

For individuals who are under age 45, age is a more advantageous factor for making an adjustment to other work. It is usually not a significant factor in limiting such individuals' ability to make an adjustment to other work, including

an adjustment to unskilled sedentary work, even when the individuals are unable to communicate in English or are illiterate in English.

20 CFR 404, Subpart P, Appendix 2, 200.00(h)(2). In this case, Claimant is attending school working towards an auto body technician degree. Claimant testified that she is able to sit for an hour and 40 minutes during class with adjustments. Claimant also spends times studying in the evenings. Claimant uses a row boat to go fishing and is able to swim in the summers at her parents' pool. Furthermore, Claimant is able to perform household activities such as cooking, laundry, vacuuming, grocery shopping and taking out the trash. While the medical evidence reveals that Claimant has a history of seizures in her legs, it also reveals that the seizures are well controlled with medication. The break through tremors are not interfering with Claimant's ability to function on daily basis. Claimant suffers from daily headaches, but is still able to attend college classes successfully. All of the above activities indicate that Claimant is already doing sedentary type activities at home. Based on the evidence presented, the Administrative Law Judge finds that Claimant maintains the residual functional capacity to perform sedentary work. See 20 CFR 404, Subpart P, Appendix 2, Rule 201.23. Accordingly, it is the finding of the undersigned, based upon the medical data and hearing record that Claimant is "not disabled" at the fifth step.

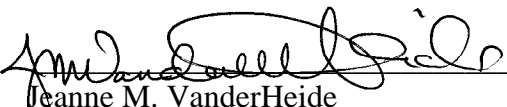
The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 1939 PA 280, as amended. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.1 et seq., and MAC R 400.3151-400.3180. 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 insufficient evidence to support a finding that Claimant's impairment has disabled her under SSI disability standards. This Administrative Law Judge finds the Claimant is not "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 finds that the Department was correct in determining that the claimant was not disabled for the purposes of the MA / SDA program and IT IS ORDERED that the Department's decision in this matter is affirmed.

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

Date Signed: May 11, 2010

Date Mailed: May 11, 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 60 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court 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.

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