

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.: 201018290

Issue No.: 2009

Case No.:

Load No.:

Hearing Date:

March 18, 2010

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

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 filed on January 25, 2010. After due notice, a telephone hearing was held on March 18, 2010. The Claimant was present and testified. Claimant was represented by [REDACTED]. [REDACTED], 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 applied for MA as of September 2, 2009. Retroactive benefits were requested for 7/17/09.
2. Claimant is 5'4" tall and weighs 270 pounds.

3. Claimant is right handed.
4. Claimant is 40 years of age.
5. Claimant's impairments have been medically diagnosed as pulmonary sarcoidosis with accompanying sequelae and lower extremity edema, ulcer and depression.
6. Claimant's physical symptoms are wheezing, shortness of breath, scalp infection, impaired vision, temporary blindness, ankle swelling, back pain, difficulty walking, lump in neck (goiter near thyroid), scarring on face, legs, back, arms and chest (dime sized and smaller pock marks), and sharp pains in side.
7. Claimant's mental symptoms are short term memory difficulty, difficulty with concentration, anxiety attacks (shortness of breath and has to go outside to breathe), crying spells (3-4x/week), a little bit of fear and anger, nervousness, decreased appetite, gain from steroids, sleep disturbances (3x/night 3 hrs at a stretch, in bed all day off/on), fatigue, and lowered self esteem.
8. Claimant takes the following prescriptions:
 - a) Methotrexate – anti inflammatory (like a steroid)
 - b) Folic Acid
 - c) Motrin for pain – 800 mg – 2 every 4-6 hours (Rx – 1 800 mg 3x daily)
 - d) Cipro – bladder infection
 - e) Albuterol inhaler
 - f) Nebulizer – 3-4x/week
9. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
10. Claimant has an 11th grade education. Claimant does not have a GED. Claimant has a builder's trade certificate, and a dental assistant certificate. Claimant worked on getting a computer certificate and cosmetology certificate, but did not complete either.
11. Claimant is able to read, write and perform basic math skills.
12. Claimant last worked at [REDACTED] in 2004 as a quality supervisor. Claimant inspected vehicle seats before they were shipped out. This job required standing all day, bending/stooping, releasing seats off rack, pushing forward, pulling down, and lifting 15-30 lbs. Claimant left that job because it was temporary. Claimant worked there a total of 2 ½ months.
13. Claimant has prior employment experience at various factory jobs (all standing), construction and rough carpentry.
14. Client testified to the following physical limitations:

- Sitting: 1 hour before backs starts hurting – then stands or lies down.
- Standing: ½ hour or less (10-15 minutes, limited by breathing)
- Walking: less than block and ½
- Bend/stoop: knee pain
- Lifting: no
- Grip/grasp: no

15. Claimant testified that she performs household chores such as washing a few dishes as long as the standing is limited. Claimant can also make her own bed. Claimant's sister and niece take the trash out. Claimant's sister cooks and leaves enough food to last 2-3 days. Claimant does not cook – sister does it and niece cleans. Standing and the smell of most of cleaning products aggravates Claimant's breathing.
16. The Department found that Claimant was not disabled and denied Claimant's application on October 30, 2009.
17. The Department received Claimant's request for a hearing on January 29, 2010.
18. Medical records examined are as follows:

11/20/09 Independent Medical Exam (Exhibit 2, pp. 1-14)

COMPLAINTS: sarcoidosis, skin rashes all over body, bronchitis, ankle pain, obesity and depression.

HX: Diagnosed with sarcoidosis in 2004 and on prednisone. SOB requiring Albuterol inhaler. Rashes all over body including eyes, nose, ears, face, scalp, and buttocks which include boil formations and cellulitis requiring antibiotics. Headaches, dizziness and blurred vision.

MEDICAL SOURCE STATEMENT: Based on today's examination, the patient has the functional capacity for working 4-6 hours a day. She has limitations on walking, standing and climbing the stairs and ladders.

ASSESSMENT:

1. Sarcoidosis, steroid dependent
2. Chronic bronchitis, mild to moderate in intensity
3. Chronic eczema
4. Chronic bilateral ankle pain, right worse than left
5. Mild exogenous obesity
6. Depression

PULMONARY FUNCTION TEST: Pt wouldn't take a deep breath or blow out – effort/cooperation = poor.

7/17/09 -7/20/09 Hospital Admission (Exhibit 1, pp. 7-20)

Admitted to hospital for fever chills and swollen painful legs. Pt diagnosed with bilateral leg ulcers, treated with IV antibiotics and evaluated by surgery. Chest x-ray showed minimal infiltrate/pneumonia

DX: Bilateral leg ulcers, hypokalemia, sarcoidosis

7/17/09 Left lateral chest radiogram (Exhibit 1, p. 18)

There is a moderate degree of bilateral lymphadenopathy with a moderate degree of right peritracheal lymphadenopathy. Minimal interstitial infiltrations of left upper lobe and of the left and right lower lobes are present. The bilateral pulmonary parenchymal pathology is essentially identical with that present on the previous chest radiograms performed on 4/12/09.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables (RFT).

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 CFR 416.905.

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). In this case, under the first step, the Claimant last worked in 2005. 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 the subject case, Claimant last worked in 2004. 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 (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 showing a diagnosis of sarcoidosis with accompanying breathing difficulties and boil formations and scarring over her body. Claimant testified to physical limitations in terms of sitting, standing, walking, lifting and performing daily chores. An independent medical doctor determined that Claimant would only have the functional capacity to work 4-6 hours/day. Therefore, the medical evidence has established that Claimant has physical impairments that have more than a minimal effect on basic work activities; and Claimant’s impairments have lasted continuously for more than twelve months. It is necessary to continue to evaluate the Claimant’s impairments under step three.

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 discusses the analysis and criteria necessary to a finding of a listed impairment. The Listing 3.02 *Chronic pulmonary insufficiency* was reviewed. In this case, 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 medical evidence reviewed does not show that the physical impairments meet the intent or severity of the listings. Sequential evaluation under step four or five is necessary. 20 CFR 416.905.

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 one can do in a work setting. RFC is the most one can still do despite limitations. All the relevant medical and other evidence in the case record applies in the assessment.

Claimant has presented medical evidence supporting pulmonary sarcoidosis with accompanying sequelae. Claimant's medical condition has progressed to the point that, in addition to difficulty breathing, she has ulcers and scarring, decreased vision and frequent

infections. Claimant's prior employment included various factory jobs (unskilled, light exertional level), construction and rough carpentry (unskilled, medium exertional level). The Independent Medical examiner indicated that Claimant has the functional capacity to work 4-6 hours per days with limitations on walking, standing and climbing stairs or ladders. The undersigned finds the limitations recommended by the IME doctor restrict Claimant to sedentary work. Claimant is, therefore, unable to return to past relevant work in any of the above listed 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 is functionally at the level of sedentary work. Sedentary work is described as follows:

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.

20 CFR 416.967(a). The independent medical examiner recommended that Claimant has physical limitation standing, walking and climbing stairs and ladders. Therefore, Claimant would be limited to sedentary work. 20 CFR 416.967. Claimant has limited education, and a history of unskilled work.

Claimant at forty 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. 20 CFR 404, Appendix 2 to Subpart P, Rule 201.00(h)(2). However, Residual Functional Capacity is what an individual can still do despite his or her limitations. It is essentially an assessment of an individual's ability to do sustained work-related physical and mental activities in a work setting on a regular and continuing basis. A "regular and continuing" basis means 8 hours a day, for 5 days a week, or an equivalent work schedule. SSR 96-8P.

This Administrative Law Judge finds that Claimant's impairments and limitations have a major effect upon Claimant's ability to perform basic work activities. Claimant is unable to perform even the full range of activities for sedentary work as defined in 20 CFR 416.967(a) because she is limited to working 4-6 hours per day. Claimant, therefore, is unable to work at even sedentary work on a regular and continuing basis. The total impact caused by the combination of medical problems suffered by the Claimant must be considered. The combination of Claimant's impairments results in a severe impairment which limits Claimant's ability to work. 20 CFR 404.1529. Therefore, it is the finding of the undersigned, based upon the medical data and hearing record that Claimant is "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). In this case, there is sufficient evidence to support a finding that Claimant's impairment is disabling him 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 on the findings of fact and conclusions of law, decides that the Claimant is "disabled" for purposes of the Medical Assistance program as of the date of the application including any retroactive benefits applied for.

It is ORDERED; the Department's determination in this matter is REVERSED.

Accordingly, The Department is ORDERED to initiate a review of the 9/2/09 application to determine if all other non-medical eligibility criteria are met. The Department shall inform Claimant of its determination in writing. Assuming Claimant is otherwise eligible for program benefits, the Department shall review Claimant's continued eligibility for program benefits in April, 2011.

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

Date Signed: April 13, 2010

Date Mailed: April 19, 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

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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.

JV/hw

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