

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg No: 201024896

Issue No: 2009

Case No:



Load No:

Hearing Date:

June 7, 2010

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jonathan Owens

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 March 9, 2010. After due notice to the Claimant, a hearing was held on June 7, 2010. The Claimant was present and testified. Angela Clark 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 benefits on January 1, 2010.
2. Claimant is 5'6" tall and weighs 190 pounds.
3. Claimant is 41 years of age.
4. Claimant's impairments have been medically diagnosed as heart murmur, rheumatoid arthritis, bilateral chondromalacia of the knees, bursitis, carpal tunnel syndrome, fibromyalgia and Sjögren's syndrome.
5. Claimant's physical symptoms are joint stiffness and tenderness; swelling of wrists and ankles; dry eyes; dry mouth; difficulty swallowing and chewing; dry cough; extreme fatigue; problems with balance; disturbed sleep, aches and pain in muscles and joints; and numbness and tingling in legs, arms and hands.

6. Claimant's mental symptoms are confusion and stress.
7. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
8. Claimant has a High School education and an Associate's degree.
9. Claimant is able to read/write/perform basic math skills.
10. Claimant last worked in [REDACTED] in a factory. Claimant also worked as a bank teller and machine processor for 10 years.
11. Claimant testified to the following physical limitations:
 - Sitting: 2-3 minutes
 - Standing: 20 minutes
 - Walking: 8 feet with cane without losing balance
 - Bend/stoop: Cannot bend without pain
 - Lifting: 3 lbs.
 - Grip/grasp: limited
12. Claimant needs help getting dressed and showering.
13. Claimant testified that she needs help with household chores and that she is unable to grocery shop or drive.
14. The Department found that Claimant was not disabled and denied Claimant's application on February 11, 2010.
15. The Department received Claimant's request for a hearing on March 9, 2010.
16. Medical records examined are as follows:

[REDACTED] Emergency Medicine IME (Exhibit A)

HX: Rheumatoid arthritis which has been fairly severe. Diagnosed in 2001 and has been taking multiple medications up to the current time. Chronic pain in joints aggravated by standing for prolonged periods of time, stooping, squatting, getting up, walking, lifting, bending, pushing, pulling, reaching and climbing stairs. She has chronic stiffness and states her right hip is worse than her left and her right knee is worse than the left as well. Previous PT and steroid injections in back. Examinee has a limp on right side and uses a cane for balance and support.

History of CTS and has pain in both wrists aggravated by grabbing items, holding objects, opening doors, turning,

twisting and repetitive movements. She has paresthesias of her upper and lower extremities.

CURRENT MEDS: Prednisone, Hydroxychloriquine, Evoxac, Tramadol, Nortriptyline, Lyrica, Hydrocodone, Zolof, Plevacid, Celebex, Vesicare, Elmiron, Oxybutynin, Ambien, Nexium, Naprosyn and Darvocet

PSYCHIATRIC HX: Positive for depression in the past, seen at hospital

PHYSICAL REVIEW: Head – positive for occasional memory problems. Eyes – blurred vision

MEDICAL SOURCE STATEMENT: Based on the exam, the examinee does need chronic and ongoing care for her medical problems and joint inflammations. She will need to take medication for a prolonged period of time on a daily basis. The examinee would have difficulty with repetitive and heavy lifting, bending, pushing, pulling, reaching and climbing stairs.

RANGE OF MOTION: Lumbar spine flexion limited to 60°

WALKING AID: Needed to reduce pain.

████████ Rheumatology Medical Exam Report (Exhibit 1, p. 28)

HX: Arthritis, fatigue

DX: Arthritis, fibromyalgia, Sjögren's syndrome

EXAM: Dry eyes and mouth, fibromyalgia tender point positive 18/18

PHYSICAL LIMITATIONS: Lifting less than 10 lbs occasionally, sitting less than 6 hours in 8 hour work day due to severe fatigue and pain throughout body.

████████ Internal Medicine IME (Exhibit 1, p. 10)

COMPLAINTS: arthralgias, myalgias, fatigue, depression, insomnia, frequent episodes of bursitis, tendonitis, dry mouth, dry eyes and frequent sinus infections.

Previous diagnosis of sjögren's syndrome and fibromyalgia, carpal tunnel syndrome with wrist splints. She has had back pain off and on for years with radiation to the right leg along with numbness and tingling. Sitting and standing for a long

period of time increases the pain. The pt has depression, insomnia, poor memory and poor concentration. She also has a history of irritable bowel syndrome.

NEUROLOGICAL EXAM: Pt has tenderness on the lateral aspect of the right wrist. She wears a wrist splint. She has mildly decreased range of motion in the lumbar spine with positive paravertebral muscle spasms in the lumbar spine.

ASSESSMENT:

1. Fibromyalgia
2. Sjögren's Syndrome
3. Right side carpal tunnel syndrome
4. Depression
5. Chronic back pain with history of spinal stenosis
6. Irritable bowel syndrome

██████████ Psychological IME (Exhibit 1, p. 17)

EMOTIONAL RX: The Claimant cried throughout much of the testing session. She indicated that her overall mood is depressed.

DX: Major depressive disorder, recurrent. Cognitive disorder NOS.

GAF: 50

PROGNOSIS: Guarded

MEDICAL SOURCE STATEMENT: Based ON Today's exam it is felt that the Claimant's ability to understand, retain and follow simple instructions and perform basic, routine and tangible task's is moderated impaired. It is believed that the Claimant is unable to manage her benefit funds independently at this time.

██████████ ER visit (Exhibit 1, p. 22)

Presented to ER complaining of pain 10 on scale of 1-10. Pt has rheumatoid arthritis and pain/stiffness chronically, just worse now because she is off meds due to finances.

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 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). 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 last worked in [REDACTED]. 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 diagnoses of a heart murmur, rheumatoid arthritis, bursitis, carpal tunnel syndrome, fibromyalgia and Sjögren’s syndrome. Claimant also has been placed on physical limitations by an independent medical examiner and her treating physician. The medical evidence has established that Claimant has physical and mental 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 supports a finding 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). Appendix I, Listing of Impairments discusses the analysis and criteria necessary to a finding of a listed impairment. The Listing 14.10 *Sjögren’s Syndrome* was reviewed as follows:

14.10 Sjögren's *Syndrome*. As described in 14.00D7. With:

- A. Involvement of two or more organs/body systems, with:
1. One of the organs/body systems involved to at least a moderate level of severity; and
 2. At least two of the constitutional symptoms or signs (severe fatigue, fever, malaise, or involuntary weight loss).
- Or
- B. Repeated manifestations of Sjögren's syndrome, with at least two of the constitutional symptoms or signs (severe fatigue, malaise, or involuntary weight loss) and one of the following at the marked level:
1. Limitations of activities of daily living.
 2. Limitations in maintaining social functioning.
 3. Limitation in completing tasks in a timely manner due to deficiencies in concentration, persistence or pace.

20 CFR 404, Subpart P, Appendix 1, Rule 14.10. Sjögren's Syndrome is described in 14.00D(7) as follows:

- (i) Sjögren's syndrome is an immune-mediated disorder of the exocrine glands. Involvement of the lacrimal and salivary glands is the hallmark feature, resulting in symptoms of dry eyes and dry mouth, and possibly complications, such as corneal damage, blepharitis (eyelid inflammation), dysphagia (difficulty swallowing), dental caries, and the inability to speak for extended periods of time. Involvement of the exocrine glands of the upper airways may result in persistent dry cough.
- (ii) Many other organ systems may be involved, including musculoskeletal (arthritis, myositis), respiratory (interstitial fibrosis), gastrointestinal (dysmobility, dysphagia, involuntary weight loss), genitourinary (interstitial cystitis, renal tubular acidosis), skin (purpura, vasculitis), neurologic (central nervous system disorders, cranial and peripheral neuropathies), mental (cognitive dysfunction, poor memory) and neoplastic (lymphoma). Severe fatigue and malaise are frequently reported. Sjögren's syndrome may be associated with other autoimmune disorders (for example, rheumatoid arthritis or SLE); usually the clinical features of the associated disorder predominate).

In the subject case, Claimant has been diagnosed with Sjögren's Syndrome by a rheumatologist at a reputable medical center. Claimant testified to dry eyes, dry mouth, difficulty swallowing, joint stiffness, severe fatigue, aches and pains, confusion and numbness and tingling in her peripheral extremities. These symptoms were also supported by Claimant's physician. In addition, Claimant has been diagnosed with rheumatoid arthritis, carpal tunnel syndrome and fibromyalgia which can be secondary to the Sjögren's Syndrome. Claimant's symptoms meet the definition of Sjögren's Syndrome and it is clear that Claimant's musculoskeletal, neurological and mental body systems have been affected by this autoimmune disease.

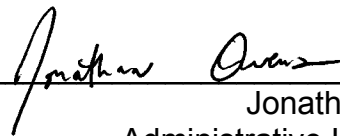
Considering all of the above, the undersigned finds the Claimant's medical records substantiate that the Claimant's mental impairments meets or are medically equivalent to the listing requirements of 1.04(A). In this case, this Administrative Law Judge finds the Claimant is presently disabled at the third step for purposes of the Medical Assistance (MA) program. As Claimant is disabled, there is no need to evaluate Claimant with regards to the fourth or fifth steps.

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 January 1, 2010.

Therefore, the Department is ordered to initiate a review of the application of January 1, 2010, 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 in August, 2011.



Jonathan Owens
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 08/09/10

Date Mailed: 08/09/10

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.

JWO/dj

cc:

