

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

IN THE MATTER OF:



Reg. No.: 201027380
Issue No.: 2009; 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: July 19, 2010
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne VanderHeide

HEARING DECISION

This matter was conducted by a telephone hearing on July 19, 2010 from Detroit, Michigan pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department on February 4, 2010. At the hearing, the Claimant was present and testified. [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") and State Disability Assistance ("SDA") programs.

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 applied for SDA and MA as of April 7, 2009 including retroactive benefits.
2. Claimant is 5'3" tall and weighs 347 pounds.
3. Claimant is right handed.
4. Claimant is 34 years of age.

5. Claimant's impairments have been medically diagnosed as asthma, sleep apnea, central disc protrusion at C5-6, disc bulge at C6-7, morbid obesity and mass on right inner thigh (3-4" protrusion from leg).
6. Claimant's physical symptoms are difficulty breathing on occasion, chest congestion on occasion, sleep issues (occasional difficulty breathing when lying down), pain across shoulders, arms, neck and upper back, lightheaded (varies 1-10/10), dizziness (1x-2x per week), difficulty standing and walking due to mass on right inner thigh, pain in leg, hip and lower back (when standing for a long time 10-15).
7. Claimant is currently treating with a neurologist.
8. Claimant takes the following prescriptions:
 - a) Cyclobenzatrine – muscle relaxer
 - b) Lodestatin – cholesterol
 - c) Aspirin – b/c of stroke
9. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months. Claimant testified that her limitations began in March 2009.
10. Claimant has a 12th grade education plus 1 semester of college.
11. Claimant is able to read/write/perform basic math skills.
12. Claimant last worked part time in 2006 doing sales for photography studio (standing/walking). Claimant worked full time driving a cab in December, 2004 (primarily sitting, occasional lifting up 20 lbs). Claimant left because she did not feel safe.
13. Claimant has prior employment experience as cashier/clerk at party stores and gas stations (lifting 20 lbs, mostly standing) and performing housekeeping in 1997 (standing, bending/stooping, lifting 5-75# dumb-bells).
14. Claimant testified to the following physical limitations:
 - Sitting: (sometimes a couple hours, sometimes 5-10 minutes – pushes up against nerve in leg and bothers leg which requires that Claimant walk around or reposition)
 - Standing: 10-15 minutes at a time. Both of legs and lower back start hurting b/c of mass in leg and pinched nerve in back.

- Walking: ½ block
- Bend/stoop: not really
- Lifting: 20 lbs lifting
- Grip/grasp: yes (bike/car accident in 1997, problems with tendons in wrist)

15. Claimant performs household chores such as cooking, cleaning and laundry. Claimant will sometimes take out the trash. Both Claimant and her brother go grocery shopping. Claimant testified that she is unable to stand for too long, but will sit down if cooking dinner or cleaning.
16. Claimant testified that if she went back to school she could do receptionist and/or medical billing/coding type work as long as she did not have to stand for eight solid hours.
17. The Department found that Claimant was not disabled and denied Claimant's application on October 28, 2009.
18. The Department received Claimant's request for a hearing on February 4, 2010.
19. Medical records examined are as follows, in part:

1/27/10 Neurologist letter (Exhibit 4)

"chief complaint of a mass in the mid right thigh, consistent with fatty deposition. This is an extremely large mass and has become pedunculated and pendulous. I do feel that surgical excision is indeed in order, however, this will require hospitalization and close postoperative care . . . may require wound vac and home care periodically".

8/9/10 Medical Exam Report (Exhibit 3)

DX: degenerative disc disease cervical with possible cord abutment, cervical myositis, morbid obesity and dyslipidemia
PHYSICAL LIMITATIONS: Lifting less than 10 lbs frequents, up to 25 lbs. occasionally. Stand/walk about 6 hours in an 8 hour day and sit about 6 hours in an 8 hour day. No hand/arm, or foot/leg restrictions.

3/22/10 Family Practitioner Medical Exam Report (Exhibit 2)

PHYSICAL LIMITATIONS: Lifting less than 10 lbs frequents, up to 25 lbs. occasionally. Stand/walk about 6 hours in an 8 hour day and sit about 6 hours in an 8 hour day. No hand/arm, or foot/leg restrictions.

11/6/09 MRI Cervical Spine w/o Contrast (Exhibit 1, p. 2)

IMPRESSION: There is a small central disc protrusion at C5-6 and ever smaller central disc bulge at C6-7.

8/28/09 IME (Exhibit 1, p. 22)

The examinee does not use a cane or aid for walking. Able to get on and off the table without difficulty. Gait and stance are normal. Tandem walk, heel walk and toe walk are done without difficulty. Able to squat to 90% of the distance and recover and bend to 90% of the distance and recover. Grip strength is equal bilaterally. Straight leg raising while lying 0-50.

LEARNING DISABILITY: The examinee has a history of a learning disability and completed the 12th grade but states she continues to have problems with her comprehension and learning.

3/25/09 CT head w/o Contrast (Exhibit 1, p. 12)

No evidence of intracranial hemorrhage, mass, mass effect or midline shift.

3/25/09 Hospital Report (Exhibit 1, p. 18)

HX: After MRI of brain, radiologist concerned the CI having a stroke

IMPRESSIONS: The pt did have acute onset of a right-sided numbness and weakness last week at her first presentation; however, she states that her symptoms have resolved over this past week and a half, the weakness has totally resolved and she is left with only some residual right-sided numbness.

3/16/09 – 3/18/09 Hospital Admission (Exhibit 1, p. 13)

HX: Morbid obesity, questionable obstructive sleep apnea. Brought in b/c of onset of right sided numbness and weakness. Pt placed on small dose of aspirin per neurology team.

IMPRESSION: inconsistent and not entirely physiologic exam. Possible demyelinating disease although unlikely at this time.

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 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 last worked in 2006. 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 of asthma, sleep apnea, central disc protrusion at C5-6 and disc bulge at C6-7. 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.

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 1.04 *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 equine) or the spinal cord) as reviewed. 20 CFR 404,

Appendix 1 of Subpart P, Rule 1.04. In this matter, the medical records establish a diagnosis of a central disc protrusion at C5-6 abutting the anterior cervical spinal cord. However, the CT scan did not reveal any central or foraminal stenosis. While Claimant's physician indicated that there was a possible cord abutment, Claimant did not testify as to any radicular symptoms. Nor is there any evidence of nerve root compression or spinal arachnoiditis. The requirements of 1.04, therefore, are not met and 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 testified that her previous employment included working sales part time at a photography studio, driving a cab and working as a cashier/clerk. Claimant primarily stood at these jobs and lifted up to 20 lbs. Claimant's physician has restricted her to lifting less than 10 lbs frequently and up to 25 lbs occasionally and walking/standing up to 6 hours in an 8 hour day. Based on these work restrictions, Claimant would be able to return to her past work. Claimant testified to more significant physical restrictions due to the mass on her right inner thigh.

In addition, Client is morbidly obese. As with any other medical condition, if obesity is a "severe" impairment alone or in combination with another medical determination physical or mental impairment(s), it can significantly limit an individual's physical or mental ability to do basic work activities. SSR 01-1p. For example, obesity affects the cardiovascular and respiratory systems because of the increased workload the additional body mass places on these systems. Obesity makes it harder for the chest and lungs to expand. This means that the respiratory system must work harder to provide needed oxygen. This in turn makes the heart work harder to pump blood to carry oxygen to the body. Because the body is working harder at rest, its ability to perform additional work is less than would otherwise be expected. *Id.* Given Claimant's testimony about her limitations and considering that Claimant is obese, the Administrative Law Judge finds Claimant limited to sedentary work. Claimant would, therefore, be unable to perform all of the duties at her previous jobs. Evaluation will be made at step 5.

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 thirty-four years of age 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 testified that she would be able to work at a sit down job. Furthermore, Claimant is able to perform household activities such as cooking, laundry, cleaning, shopping and taking out the trash. Claimant is not currently taking any pain medication for her disc herniation. While Claimant's activities are limited by her weight, she is not completely limited. Based on the evidence presented, the Administrative Law Judge finds that Claimant

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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.

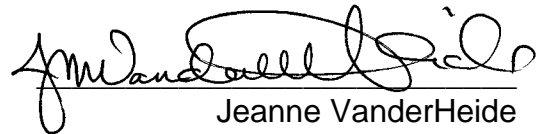
The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 1939 PA 280, as amended. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.1 et seq., and MAC R 400.3151-400.3180. 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 BEM 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 VanderHeide
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: August 24, 2010

Date Mailed: August 24, 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

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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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cc:

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