

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2010-51610
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: December 13, 2010
DHS County: Wayne (82-18)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to Michigan Compiled Laws (MCL) 400.9 and 400.37 and Claimant [REDACTED] request for a hearing. After due notice, a telephone hearing was conducted on December 13, 2010. Claimant appeared and testified at the hearing. [REDACTED], appeared and testified on behalf of the Department of Human Services (DHS).

ISSUE

Whether Claimant's disability meets the medical criteria for eligibility for Medical Assistance (MA or Medicaid) benefits?

FINDINGS OF FACT

The Administrative Law Judge, based on competent, material and substantial evidence in the record and on the entire record as a whole, finds as fact:

1. On March 17, 2010 Claimant applied for MA and retroactive MA benefits.
2. Claimant's impairments have been medically diagnosed as rheumatoid arthritis, hypothyroidism, depression, eating disorder and trouble sleeping.
3. Claimant's physical symptoms are joint pain, loss of appetite, drowsiness, and constant thirst. Claimant testified she takes Trazodone, Naproxen, Bentyl, Wellbutrin, Zantac, Levothyroxine, Sertraline, and ProAire. Claimant has another prescription, Hydroxychloroquine, which she is not currently using.

4. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
5. Claimant is 4'8" tall and weighs 106 lbs.
6. Claimant is 21 years of age. Her date of birth is [REDACTED].
7. Claimant received her high-school diploma in [REDACTED] and is currently a junior at [REDACTED]. She is taking one course, which is an online course, this semester.
8. Claimant is able to read, write and perform basic math skills.
9. Claimant has never been employed.
10. Claimant testified to the following physical limitations:
 - Sitting: uncomfortable after 20-30 minutes, sometimes less.
 - Standing: 15-20 minutes at a time.
 - Walking: 10-15 minutes at a time.
 - Bend/stoop: Claimant can perform these motions, but they are sometimes hard to do.
 - Lifting: Claimant cannot lift more than three lbs.
 - Grip/grasp: Claimant experiences pain with gripping and grasping motions.
11. Claimant lives with her mother.
12. Claimant performs limited household chores. She can dust and she can wash small loads of dishes. Sometimes she can clear her own dishes from the table. Laundry work is too hard for her to perform. She can make her bed some, but not all, of the time. She cannot take out the trash because it is too heavy and because it is painful. As for yard work, Claimant lives in an apartment and there is none available.

Claimant's Activities of Daily Living questionnaire states,

"I wake up with pain in the middle of the night...[sleeping habits] got worse... I have had more pain in my hands so I'm unable to use my hands that often... Because I have pain in my hands or knees, I need help more then (sic) 3 times a week... I get stiff and have a hard time with moving my joints all through the day. This is painful." Department Exhibit 1, pp. 11-12, 15.

13. On August 27, 2010, Claimant filed a notice of hearing request with DHS.
14. On September 8, 2010, DHS found that Claimant was not disabled and denied her application for MA benefits.
15. Medical records examined are as follows, in part:

[REDACTED]

- Juvenile rheumatoid arthritis.
- Hypothyroidism.
- No limitations.
- Wrist pain.
- Tiredness due to hypothyroidism.
- Levothyroxine prescribed. Department Exhibit 1, pp. 5-7.

[REDACTED] Diagnosis:

“polyarticular JIA [juvenile idiopathic arthritis], depression and hypothyroidism. She continues to have a significant amount of pain without evidence of ongoing arthritis. Her current hypothyroid state could also be contributing to her symptoms. I elected to continue her medications at their current doses, but provided her a prescription for EMLA (lidocaine) cream to apply locally. I also continued to encourage regular exercise. I plan see (sic) Julie back in followup in approximately 4 months. I would be happy to see her sooner if any problems develop.”
Id., pp. 33-34.

[REDACTED] Diagnosis: abdominal pain. Procedures: Esophagogastroduodenoscopy, 3 biopsies. *Id.*, pp. 72-94.

[REDACTED] Diagnosis: Probably ongoing constipation. *Id.*, pp. 113-114.

Emergency Department Visits (11):

[REDACTED] Diagnosis: rheumatoid arthritis.

History of Present Injury: patient presents to Emergency Department complaining of sharp left hip and burning left knee pain, which began four days ago. Patient’s mother states that patient’s hip has been “popping out.” *Id.*, pp. 44-52.

[REDACTED] [REDACTED]
[REDACTED] Diagnosis: Joint pain – wrist (right).
History of Present Injury: Patient has history of arthritis in her right wrist and has had pain like this before. This pain started about eight hours ago, no history of trauma or injury, no fever. Took one Vicodin with no improvement. Pain radiates from the wrist into the entire hand. No numbness or tingling.
Physical exam: positive Tinel sign with worsening of her pain.
Nursing assessment: Pain is continuous. On a scale 0-10 patient rates pain as 10, radiates to fingers.
Doctor Notes: I suspect that this is due to either worsening of her known arthritis vs. Carpal tunnel given the positive Tinel sign. Advised her to use Motrin as it is an anti-inflammatory in addition to her Vicodin and to purchase a wrist splint and wear it all the time. *Id.*, pp. 53-61.

[REDACTED]
Diagnosis: Abdominal pain. *Id.*, pp. 62-71.

[REDACTED] [REDACTED]
[REDACTED] Discharge Instructions: Suspected gastritis. *Id.*, pp.18, 35-42.

[REDACTED] [REDACTED]
[REDACTED] i. Discharge Instructions: Abdominal pain. *Id.*, p. 16.

[REDACTED] [REDACTED]
[REDACTED] Diagnosis: Abdominal pain. *Id.*, pp. 96-104.

[REDACTED] [REDACTED]
[REDACTED] . Discharge Instructions: Abdominal pain. *Id.*, pp. 17, 105-112.

[REDACTED] [REDACTED]
[REDACTED] Discharge Instructions: Abdominal pain. *Id.*, pp. 19, 115-124.

[REDACTED] [REDACTED]
[REDACTED] Discharge Instructions: Right hip arthralgia. *Id.*, p. 27.

[REDACTED] [REDACTED]
[REDACTED] Discharge Instructions: Dizziness. *Id.*, p. 28.

[REDACTED] Discharge Instructions: Sacroiliac pain, arthralgia. *Id.*, pp. 29-32.

CONCLUSIONS OF LAW

MA was established by Title XIX of the U.S. Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). DHS administers the MA program pursuant to MCL 400.1 *et seq.*, and MCL 400.105. DHS' policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT). These manuals are available online at www.michigan.gov/dhs-manuals.

Federal regulations require that DHS 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 finder 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. If the factfinder finds disability at a particular step in the process, then evaluation under a subsequent step is not necessary.

1. Current Substantial Gainful Activity

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 or he has the demonstrated ability to engage in SGA. 20 CFR 416.974 and 416.975. If an individual engages in SGA, she or he is not disabled regardless of how severe the physical and

mental impairments are and regardless of age, education and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

In this case, Claimant has never been employed. Therefore, I find that Claimant is not disqualified at the first step and I proceed to the second required step of the analysis.

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 means 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, coworkers 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 medical merit. The U.S. Sixth Circuit Court of Appeals, in *Salmi v Secretary of Health and Human Services*, 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 F2d 860, 862 (6th Cir 1988); *Farris v Sec’y of Health & Human Servs*, 773 F2d 85, 90 (6th Cir 1985).

In this case, Claimant has presented medical evidence of rheumatoid arthritis, hypothyroidism, depression and sleep difficulties. Claimant has a positive Tinel’s sign in the right wrist and has been advised to wear a right wrist splint at all times. Claimant is under ongoing care with her primary care physician and with a University of Michigan rheumatology specialist. The medical evidence establishes that Claimant has physical impairments that have more than a minimal effect on basic work activities, and Claimant’s impairments can be expected to last for at least twelve months. I have also taken into consideration Claimant’s history of juvenile rheumatoid arthritis.

3. Listed Impairment

After reviewing the criteria of CFR Title 20, Appendix 1 to Subpart P of Part 404 – Listing of Impairments, Listing 1.02, *Major dysfunction of a joint(s) (due to any cause)*, the undersigned finds that Claimant's medical records substantiate that Claimant's medical impairments meet or are medically equivalent to the listed requirements. 20 CFR 404 §1.02 describes Major Joint Dysfunction as follows:

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;
- or
- B. Involvement of one major peripheral joint in each upper extremity (*i.e.*, shoulder, elbow, or wrist-hand), resulting in inability to perform fine and gross movements effectively, as defined in 1.00B2c.

20 CFR 404, Appendix 1 to Subpart P, Listing of Impairments, Sec. 1.02, p. 9.

In this case, Claimant has rheumatoid arthritis which is causing wrist, hip and other joint pain. Claimant has difficulty sitting, standing, walking, bending, stooping, lifting, gripping and grasping. Claimant also has hypothyroidism, depression, and sleep difficulties related to the onset of pain. Claimant is under the care of both her primary care physician and a [REDACTED] rheumatologist. Claimant visited the [REDACTED] [REDACTED] twice in the past year for severe joint pain.

I have considered all of the testimony and evidence in this case as a whole in reaching my decision. I note that Claimant has had no treatment over the past year for her disability due to economic constraints. However, both her primary care physician and her rheumatologist have made clinical observations, and they both agree that their observations require continuing prescription medication and examination. Claimant's medical history and her testimony are consistent with the two medical opinions, and I accept her testimony. I have taken all of this into consideration as required by 20 CFR 404, Subpart P, Appendix 1, Section 1.00H, Documentation-When there is no record of ongoing treatment:

Some individuals will not have received ongoing treatment or have an ongoing relationship with the medical community despite the existence of a severe impairment(s). In such cases, evaluation will be made on the basis of the current objective medical evidence and other available evidence, taking into consideration the individual's medical history, symptoms, and medical source opinions. Even though an individual who does not receive treatment may not be able to show an impairment that meets the criteria of one of the musculoskeletal listings, the individual may have an impairment(s) equivalent in severity to one of the listed impairments or be disabled based on consideration of his or her residual functional capacity (RFC) and age, education and work experience. 20 CFR 404, Subpart P, Appendix 1, Sec. 1.00H.

Considering all of the above and including Claimant's age, education and work experience, the undersigned finds Claimant's medical records substantiate that Claimant's orthopedic impairments meet or are medically equivalent to the listing requirements of 1.02(B). In this case, this Administrative Law Judge finds Claimant is presently disabled at the third step for purposes of the MA program. As Claimant is disabled, there is no need to evaluate Claimant with regard 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 the federal SSI disability standards. This Administrative Law Judge finds Claimant is disabled for purposes of the MA program of the State of Michigan.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is medically disabled as defined by the MA program.

DHS is ordered to initiate a review of Claimant's June 17, 2010, application, if not done previously, to determine Claimant's non-medical eligibility for MA and retroactive MA. DHS shall inform Claimant of its determination in writing. This case shall be reviewed in December 2011.



Jan Leventer
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: December 21, 2010

Date Mailed: December 22, 2010

2010-51610/JL

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.

JL/pf

cc:

