

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.: 20105229

Issue No.: 2009

Case No.:

[REDACTED]

Load No.:

Hearing Date:

March 29, 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 September 9, 2009. After due notice telephone hearing was held on March 29, 2010. The Claimant was present and testified. Claimant was represented by [REDACTED]. [REDACTED] MCW and [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 filed for MA on May 15, 2009. Claimant requested MA retroactive to 2/09.
2. Claimant is 5'2 1/2" tall and weighs 140 pounds.

3. Claimant is right handed.
4. Claimant is 47 years of age.
5. Claimant's impairments have been medically diagnosed as chronic obstructive pulmonary disease, seizures, diabetes and HBP, bleeding uterine fibroids, arthritis, depression, severe chronic anemia, asthma, and decreased vision.
6. Claimant's physical symptoms are pain in feet to knee on left side (throbbing 10/10), pain in eyes, pain in neck, pains in left hand, shortness of breath, sleep disturbances due to pain (wakes two times during night and sleeps a total of about 4 hrs/night), seizures (every 4 months, black outs and falls with resulting scar on nose), tingling in hands and arms and legs, blurry vision, dizziness (constantly, causes difficulty standing), heavy bleeding on menstruation, weakness, and low back pain.
7. Claimant's mental symptoms are memory difficulty (long term), low concentration, panic attacks (was rape victim so when starts thinking – gets weak, has to sit), anxiety attacks (gets nervous when in room full of people), crying spells, confusion, fear/anger, nervousness in stomach, low appetite, sleep disturbances, fatigue, suicidal thoughts (all the time), fear of being in public, guilt feelings, hallucinations (hears noises, sees things flying around, faces may appear in her face) paranoia, and low self esteem.
8. Claimant testified that she is hospitalized approximately every seven months for anemia and seizures.
9. Claimant currently cannot afford any prescription medication, so she is not taking anything other than Symbicort (inhaler) every hour. Claimant has been prescribed the following:
 - a) Paxil
 - b) Iron
 - c) Diabetes medication
 - d) Seizure medication
 - e) Nebulizer 2x/day
10. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
11. Claimant has an 8th grade education. Claimant was in special education classes. Claimant never received a GED.
12. Claimant is not able to read or write. Claimant can add and subtract a little. Claimant's son makes change at the store. Claimant cannot multiply or divide.

13. Claimant last worked in 2000 watching kids for her sister in exchange for food.
14. Claimant has prior employment experience as a housekeeper in the 1980s. Claimant dusted, so she would alternate standing and sitting. No lifting required was required, but it did require bending and stooping.
15. Claimant testified to the following physical limitations:
 - Sitting: ½ hour, then stands
 - Stand: ½ hour
 - Walk: 2 blocks
 - Lifting: not even a gallon of milk
 - grip/grasp: drops things.
16. Claimant's son comes over to help. Claimant testified that she cannot make her bed b/c of lifting. Claimant wakes tired and weak in a.m. Son comes over and prepares meals M-F and shops for food. Claimant is able to take care of her personal needs although her sister will help her put on her pants and shirt due to weakness.
17. Claimant uses a cane to walk. Claimant also testified that she uses Depends on a daily basis.
18. The Department found that Claimant was not disabled and denied Claimant's application on 7/15/09
19. Medical records examined are as follows:

1/6/10 – 1/19/10 Hospital Admission (Exhibit A)

Admitted to hospital for exacerbation of chronic obstructive pulmonary disease with hemoglobin of 4.2. Received 4 units of RBCs. Severe iron-deficiency anemia due to fibroids causing her menorrhagia. Instructed not to drive for six months as history of seizures.

Discharge medications: spirivia inhalation casules, proair, symbicort, feosol, ascorbic acid, thiamine, metformin, zestoretic, Benadryl and prednisone,

1/16/10 CT Abdomen (Exhibit A, p. 20-21)

Large uterine fibroid with necrotic degeneration. Tiny hypodense lesion in left kidney.

1/16/10 Dr. Report (Exhibit A, pp. 26-27)

IMPRESSION: This is a compelling argument for iron deficiency anemia. CT scans of the abdomen and pelvis establish uterine fibroids which were marked and present. This would simply involve treatment of the underlying gynecological problem.

8/31/09 Psychological IME (Exhibit 2, p. 2)

COMPLAINTS: She has bouts of severe depression. Claimant feels suicidal and plans her own funeral at times. She has been unable to get Paxil because she has no insurance and cannot work. She cries easily.

TX: Treating for diabetes, Grand Mal seizures, depression and strokes. She has fallen on her face several times when she had a seizure. She has scars on her face from falling. She has to have a blood transfusion every 6 months because she has a low white blood count. Cocaine withdrawal on hospital admission 9/08. Drug treatment program at Salvation Army in 2005. She has breathing problems from having COPD.

MENTAL STATUS: Her motor activity is slowed. Her motivation is fair. Her self esteem has been affected by her health problems.

MENTAL TREND: She has feelings of worthless and suicidal ideation. Claimant sleeps poorly sometimes.

EMOTIONAL REACTION: Claimant's affect is constricted and mood is depressed. She cannot stand to be around people because she has panic attacks.

ADD'L INFO: CI is able to understand, retain and follow simple instructions and generally restricted to performing simple, routine, repetitive, concrete, tangible tasks. Due to depression and a long history of substance dependence, alcoholism and sexual abuse, Claimant is restricted to work that involves brief, superficial interactions with coworkers, supervisors and the public. She may not be able to do physical work such as lifting or heavy housework. Claimant is subject to relapses and I suspect the pressure of employment would be a major factor that would result in decompensation on her part.

DX: Major Depressive Disorder Moderate to Severe. History of polysubstance dependence (alcohol, cocaine and marijuana). GAF 40-45. Prognosis is guarded.

7/7/09 Internist IME (Exhibit 2, p. 8)

HX: Seizures with loss of bladder control. Most recent in 2/09. Mild or borderline diabetes, Mild asthma with inhalers on prn basis. Severe anemia, Hepatitis B.

DX: H/o alcohol and substance abuse; probable seizure disorder, secondary to alcohol abuse, uterine fibroids with a history of fairly severe anemia, mild chronic bronchitis, possibly mild bilateral carpal tunnel syndrome.

WORK: No working on high platforms, climbing ladders or steps, driving and no repetitive use of hands.

2/14/09 – 2/19/09 Hospital Admission (Exhibit 2)

Past medical history of uterine fibroids, menorrhagia, anemia requiring transfusion, questionable history of seizure disorder, asthma, depression, hypertension, diabetes and substance abuse. The patient's initial workup shows a hemoglobin of 4.0. The patient was admitted to the hospital and given blood transfusions.

1. Generalized weakness and possibly syncope/seizure, likely secondary to severe anemia and low blood pressure.
2. Menorrhagia
3. Anemia secondary to blood loss
4. Thrombocytopenia secondary to TEOH abuse.
5. Polysubstance abuse.
6. No driving for six months.

9/24/08 Hospital Admission (Exhibit 2)

Seizures following withdrawal from crack cocaine, chest pains, rule out acute coronary syndrome, chronic anemia. Hemoglobin 6.2

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 2000. 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 chronic obstructive pulmonary disease, chronic anemia, seizure disorder, uterine fibroids, menorrhagia, and major depressive disorder, moderate to severe. Claimant testified to physical limitations in terms of sitting, standing, walking, lifting and performing daily chores. An independent psychiatrist determined that Claimant is restricted to work that involves brief, superficial interactions with coworkers, supervisors and the public. Furthermore, the pressure of employment would subject Claimant to relapses. Therefore, 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.

However, the medical records also establish cocaine abuse. 20 CFR 416.935 requires a determination of whether drug addiction or alcoholism is a contributing factor material to the determination of disability through the factors of 20 CFR 416.935(a) through (2) (ii). The evaluation used is as follows:

- (1) Determine which physical and mental limitations would remain if Claimant stopped using drugs or alcohol.
- (2) If remaining limitations would not be disabling, drug addiction or alcoholism is a contributing factor material to a determination of disability.
- (3) If remaining limitations are disabling independent of drug addiction or alcoholism, substance abuse is not a contributing factor material to a determination of disability.

At the time of the hearing, Claimant had been clean from alcohol and recreational drugs for several months. Claimant has not had any seizure activity recently and it is possible that the seizures are strictly related to cocaine withdrawal. Accordingly the seizures will not be considered in the remainder of the analysis. Claimant's anemia, obstructive pulmonary disease, uterine fibroids, menorrhagia and depression continue despite the cessation of drug and alcohol use. As these conditions continue to be disabling, the drugs and alcohol are not a contributing factor material to the issue of disability. Therefore, 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 7.02 *Chronic anemia* 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 claimant has required one or more blood transfusions on an average of at least once every 2 months. Therefore, the physical impairments do not 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 diagnoses of major depressive disorder – moderate to severe, chronic obstructive pulmonary disease, bleeding uterine fibroids with resulting menorrhagia and iron deficiency anemia. Claimant testified that she suffers from excessive monthly bleeding and that approximately every 7 months she ends up in the hospital with severe anemia, requiring blood transfusions of 4 pints of blood. Prior to each hospital admission, Claimant testified that she is dizzy, lightheaded, weak and extremely tired. In addition, Claimant experiences shortness of breath and crying spells.

Claimant essentially has no relevant work history. She last worked in 2000 watching her sister's kids (unskilled, light exertional level) for food. All other prior employment experience was more than 15 years ago. As there is no relevant employment experience, Claimant's ability to perform work will be evaluated 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 physical RFC for work activities is functionally at or below the level of sedentary work based on the medical records and testimony presented.

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).

Claimant at forty-seven is considered a *younger individual*; a category of individuals in age group 45-49 when age is a lesser advantage factor for making adjustment to other work. 20

CFR 404, Appendix 2 to Subpart P, Rule 201.20. Claimant's education is "limited or less – illiterate" and she has no relevant previous work history. While generally, such an individual would be able to make a transition into sedentary work, there are exceptions:

Inability to engage in substantial gainful activity would be indicated where an individual who is restricted to sedentary work because of a severe medically determinable impairment lacks special skills or experience relevant to sedentary work, lacks educational qualifications relevant to most sedentary work (e.g., has a limited education or less) and the individual's age, though not necessarily advanced, is a factor which significantly limits vocational adaptability.

20 CFR 404, Appendix 2 to Subpart P, Rule 201.00(c). In the present case, Claimant has no relevant work history and only completed the 8th grade in special education classes. Claimant is unable to read or write. Accordingly, Claimant is disabled at the 5th step pursuant to the table located at 20 CFR 404, Subpart P, Appendix 2, Rule 201.17.

This Administrative Law Judge finds the Claimant is "disabled" for purposes of the MA program.

DECISION AND ORDER

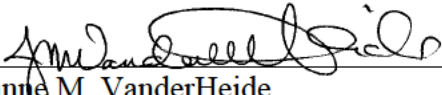
The Administrative Law Judge, based on the findings of fact and conclusions of law, decides that the Claimant is "disabled" for purposes of the Medical Assistance program as of the date of the application including any retroactive benefits applied for.

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

Accordingly, The Department is ORDERED to initiate a review of the 5/15/09 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.

The Medical Social Work consultant in conjunction with the Medical Review Team is to consider the appropriateness of ORDERING the Claimant into mandatory mental health treatment and substance abuse counseling.

Further, a referral is to be made to Adult Protective Services to consider benefit fund management on behalf of the Claimant; and other actions as necessary.

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

Date Signed: April 12, 2010

Date Mailed: April 16, 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.

JV/hw

cc: 