

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: 20101054
Issue No: 2009, 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 18, 2009
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted on November 18, 2009 pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department on August 31, 2009. The undersigned Administrative Law Judge has written this hearing decision after review of a evidence in the record. At the hearing, the Claimant was present and testified along with a witness [REDACTED]. Diane King, MCW and Eligibility Specialist 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 on the competent, material and substantial evidence on the whole record, finds as material fact:

1. Claimant applied for SDA and MA as of July 17, 2009.

2. Claimant is 5'3" tall and weighs 145 pounds.
3. Claimant is right handed.
4. Claimant is 47 years of age.
5. Claimant's impairments have been medically diagnosed as bilateral aneurysms following a stroke in [REDACTED] of 2008 and a fibroid tumor on her ovary.
6. Claimant's physical symptoms are headaches (every day, stabbing pain near incision site above ear and along scar – starts at forehead and curves to left ends right above ear), somewhat slurred speech, stuttering (if tries to talk too fast or if she's upset), slow speech, short term memory loss, right hemiparesis, dent in head and speech deficits. At the hearing, Claimant exhibited difficulty forming thoughts and getting out what she wanted to say.
7. Claimant's mental symptoms are short term memory loss, crying spells (every day), anger, nervousness, panic attacks (a couple – heart feels like it will pop it out of chest, claimant feels it in neck area), fatigue and low self esteem.
8. Claimant takes the following prescriptions:
 - a) HCL thyzidine
 - b) High blood pressure medication
 - c) Naalipril
9. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
10. Claimant has a high school education. Claimant also attended cosmetology school.
11. Claimant is able to read/write/perform basic math skills.
12. Claimant last worked as [REDACTED], 2007 as a loan officer for SMART investment and real estate. Occasional bending & stooping, 5 lbs lifting, required walking to fax machine, getting file from back, and getting paperwork.
13. Claimant has prior employment experience as retail cashier at [REDACTED] and grocery stores (lifting 24 packs of water, cases of beer – bending & stooping, standing the whole day) and as a telemarketer (sitting, constant telephone usage).
14. Claimant testified to the following limitations:
 - Sitting: no limitations
 - Standing: 1 hour (gets restless)
 - Walking: At least a block
 - Bend/stoop: No – gets dizzy if stays down too long

some speech deficits. She has a mild expressive speech disorder as well as dysarthria. She has short-term memory loss which makes it difficult for her to function in a workplace. She has poor concentration as well. The cerebral angiogram which the patient had for diagnosis of her left ICA bifurcation aneurysm did also reveal a right posterior communicating artery aneurysm that is about 8 mm in size. This aneurysm does need to be treated as well. There is a risk of rupture which would carry a high risk of morbidity and mortality. The patient has been recommended to have an updated cerebral angiogram and subsequent surgery for clipping of this aneurysm as well.

██████████ Medical Examination Report (Exhibit 3)

CURRENT DX: Aneurysm on both sides of head, anxiety, hypertension

CLINICAL IMPRESSIONS: Deteriorating

PHYSICAL LIMITATIONS: lifting less than 10 lbs., stand/walk less than 2 hours in 8 hour day, no pushing or pulling. Pt has untreated intracranial aneurysm at risk of rupture.

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 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, Claimant has not worked since [REDACTED] of 2007. 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 bilateral aneurysm with resulting right hemiparesis, speech deficits and short-term memory loss. The medical evidence has established that Claimant has a medical impairment that has more than a minimal effect on basic work activities as shown by doctors' restrictions, and Claimant's impairments have lasted continuously for more than twelve months. Therefore, Claimant meets the burden of the second step.

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). In this matter, the medical records establish a diagnosis of coronary artery disease and bipolar disorder. After reviewing the criteria of listing 4.10 *Aneurysm of aorta or major branches*, the undersigned finds the Claimant's medical records substantiate that the Claimant's impairments meets or is medically equivalent to the listing requirements.

In 20 CFR 404, Appendix 1 to Subpart P, Listing 4.10 is described as follows:

Aneurysm of aorta or major branches, due to any cause . . . , demonstrated by appropriate medically acceptable imaging, with dissection not controlled by prescribed treatment (see 4.00H6)

4.00H(6) continues the description:

When does an aneurysm have "dissection not controlled by prescribed treatment," as required under 4.10? An aneurysm (or bulge in the aorta or one of its major branches) is *dissecting* when the inner lining of the artery begins to separate from the arterial wall. We consider the dissection not controlled when you have persistence of chest pain due to progression of the dissection, an increase in the size of the aneurysm, or compression of one or more branches of the aorta supplying the heart, kidneys, brain or other organs. An aneurysm with dissection can cause heart failure, renal (kidney) failure, or neurological complication.

In the present case, Claimant had a left internal carotid artery bifurcation aneurysm which was surgically addressed. Claimant also has a right posterior communicating artery aneurysm about 8 mm in size that still requires surgical intervention. In addition, Claimant has experienced neurological complications such as right hemiparesis, speech deficits, poor

concentration and short term memory loss as a result of the aneurysm despite prescribed treatment. Accordingly, Claimant's medical impairment satisfies or is medically equivalent to the criteria set out in the listing set forth above.

Therefore, the undersigned finds the Claimant's medical records substantiate that the Claimant's mental impairments meets or are medically equivalent to the listing requirements. 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.

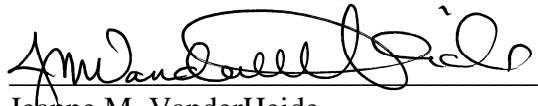
The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 1939 PA 280, as amended. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.1 et seq., and MAC R 400.3151-400.3180. 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 PEM 261.

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 July 17, 2009.

Therefore, the department is ORDERED to initiate a review of the application of July 17, 2009, 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 March, 2011.



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

Date Signed: 03/10/10

Date Mailed: 03/11/10

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.

JV/dj

cc:

