

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: 201015386
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 11, 2010
Macomb County DHS

ADMINISTRATIVE LAW JUDGE: Jonathan Owens

HEARING DECISION

This matter was conducted by an in person hearing on March 11, 2010 pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department. At the hearing, the Claimant was present and testified. Claimant was represented by [REDACTED]. Constance Wasileff 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 June 10, 2008. Claimant requested MA retroactive to May 2008.
2. Claimant's impairments chronic lymphocytic leukemia/thrombocytopena with splenectomy, depression and anxiety.
3. Claimant's physical symptoms are fatigue, struggles to bend over, pain in lower back, constant itchy and dry skin, bleeding and tenderness in right wrist.
4. Claimant's mental symptoms are anxiety attacks and depression. Claimant is currently on prescription medication for her depression.
5. Claimant is 5'7" tall and weighs 215 pounds.

6. Claimant testified to the following physical limitations:
 - Sitting – 1 hour
 - Standing – 45 min.
 - walking – 200 yards
 - Lifting – up to 5 lbs.
7. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
8. Claimant is 58 years of age.
9. Claimant completed the 9th grade in high school.
10. Claimant was last employed in 1999 in a print shop (answering phones, type setting, putting orders together, billing, lifting boxes up to 20 lbs occasionally, and lifting boxes up to 10 lbs ¼ of the day). Claimant also worked as a waitress for over 10 years (walking/standing, carrying up to 20 lbs).
11. Claimant testified that she performs her own household chores including grocery shopping.
12. The Department found that Claimant was not disabled and denied Claimant's application on September 11, 2008.
13. Claimant requested a hearing on December 15, 2009.
14. Medical records examined are as follows, in part:

██████████ Oncology Medical Exam Report (Exhibit A, p. 79)

DX: Chronic lymphocytic leukemia/thrombocytopenia

MENTAL: Anxiety

CLINICAL IMPRESSIONS: Stable

PHYSICAL LIMITATIONS: Limited. No lifting, no significant stand/walking. No grasping, reaching, pushing/pulling or fine manipulating, no foot control operations.

██████████ Oncology Report (Exhibit A, p. 83)

SYMPTOMS: slight fatigue

IMPRESSION: 1) Chronic lymphocytic leukemia Rai Stage 1

PLAN: Will continue surveillance and have pt return to clinic in 3 months with CBC on return.

██████████ Oncologist Report (Exhibit A, p. 71)

CLL appears to be stable. Recommended maintaining surveillance at 6 month intervals.

████████ Oncology Medical Exam Report (Exhibit A, pp. 1-2)

HX: Thrombocytopenia, leukemia, chronic lymphoid with remission

GENERAL EXAM: Fatigue

CLINICAL IMPRESSIONS: Stable

PHYSICAL LIMITATIONS: No limitations

████████ Oncologist Report (Exhibit A, p. 32)

Doing quite well post splenectomy due to profound thrombocytopenia. Will continue to monitor every 3 months for a year and then if labs remain stable consider decreasing to every six months.

████████ ER visit (Exhibit A, p. 51-52)

Presented to ER complaining of abdominal pain and being sweaty. Gallbladder ultrasound showed possibly small stones with a common bile duct of 6.8 mm. Pt given Dilaudid for pain control. Pt admitted for Operative cholangiogram.

████████ Oncologist Report (Exhibit A, pp. 9-10)

Chronic lymphocytic leukemia/small lymphocytic lymphoma and elected to undergo an elective splenectomy on ██████████. After removal of spleen, patient experienced an elevation in her platelet count.

PLAN: Follow at 3 month intervals. For the most part she should do well and I would not advocate any treatment intervention since this is an incurable disease process, but at the same time, it is extremely treatable with a long life expectancy.

████████ Splenectomy (Exhibit A, p. 22)

Due to profound thrombocytopenia

████████ Oncology Consultation (Exhibit A, p. 12)

IMPRESSION: 1) thrombocytopenia; 2) leukocytosis with lymphocytosis; 3) hx of psoriasis

MEDICATIONS: Seroquel, Prozac, Antivan

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/Program Administrative Manual (BAM/PAM), the Bridges/Program Eligibility Manual (BEM/PEM) 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 1999. 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 from medical providers of chronic lymphocytic leukemia, profound thrombocytopenia with splenectomy, anxiety, depression and psoriasis. Claimant also testified to physical limitations in terms of sitting, standing, walking and lifting which are supported by her physicians. 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 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 Listings 7.06 *Chronic thrombocytopenia* and 13.06 *Leukemia* were 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 the physical impairments 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 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 has been placed on significant physical limitations by her treating physician. Taking into consideration Claimant's testimony of what she is able to do, this Administrative Law Judge has determined that Claimant is able to lift up to 5 lbs. occasionally and is limited to walking/standing less than 2 hours/day which would place her at the limit of sedentary work. Claimant's prior employment, both working in a print shop and as a waitress, was unskilled and light as it required walking and standing and/or lifting more than a minimal portion of the day. Based on this information the undersigned finds the Claimant unable to return to past relevant work in any of the above mentioned prior occupations. Evaluation under step five will be made according to the law.

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 at the level of sedentary work. Claimant would not have any limitations on a sedentary job that allowed her to alternate sitting and standing. 20 CFR 416.967.

Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines 20 CFR 16.967(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.

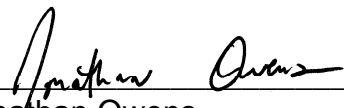
Claimant at fifty-eight years is considered an individual of *advanced age*; a category of individuals age 55 and over. Considering Claimant's medical limitations, this Administrative Law Judge finds that Claimant's impairments render her capable of doing only sedentary work. Given Claimant's age, 9th grade education, and prior work experience of unskilled work, Claimant is disabled for the purposes of the programs per rule 201.01. 20 CFR 404, Subpart P, Appendix 2, Table 1, Rule 201.1. There is no need to consider Claimant's mental capacity as she is disabled as a matter of law per the sedentary work table.

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 the date of application, including any retroactive benefits applied for.

Therefore, the Department is ORDERED to initiate a review of the application of June 10, 2008, 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 July of 2011.



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

Date Signed: 08/04/10

Date Mailed: 08/04/10

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:

