

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

██████████

Claimant

Reg. No.: 201017399

Issue No.: 4031, 2009

Case No.: ██████████

Load No.: ██████████

Hearing Date:
April 22, 2010

Macomb 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 November 5, 2008. After due notice, a telephone hearing was held on April 2, 2009. The Claimant was present and testified. ██████████, Claimant's mother, also testified on behalf of Claimant. ██████████, AP Supervisor 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 Assisatance ("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 benefits on July 27, 2009 including retroactive benefits through April 2009.
2. Claimant is 5' 1 1/2" tall and weighs 250 pounds.

3. Claimant is right handed.
4. Claimant is 31 years of age.
5. Claimant's impairments have been medically diagnosed as diabetes, arthritis, chronic back pain, hypothyroidism, neuropathy, depression, heart burn, indigestion, acid reflux, (pinched nerve L4-L5, sciatic nerve), migraines, high cholesterol, anemia, sinus tachardia, chronic ear infections, anxiety and major depression, severe without psychotic features.
6. Claimant's physical symptoms are blurry vision, low back pain radiating down into legs and feet, neck pain radiating into arms and shoulders, numbness and tingling in legs and feet, pain in wrists and feet, tiredness and fatigue, and headaches.
7. Claimant's mental symptoms are poor short term memory, poor concentration, panic attacks (anxious when people are loud, shuts down), Anxiety attacks (sometimes different than panic attacks caused by stress), crying spells (3-4x/week), confusion (can't remember what she was doing or loses train of thought), nervousness, weight gain, sleep disturbances, fatigue, some suicidal thoughts, avoids the public, guilt feelings, hallucinations (hears dead husband's voice, sees dead husband in sleep), poor self esteem, loss of interest in activities and socializing.
8. Claimant takes the following prescriptions:
 - a) Lantus injection – diabetes
 - b) Novolog injection – diabetes
 - c) Metformin – diabetes
 - d) Lopressor – slow heart rate down
 - e) Levythyroxin
 - f) HCZt – water pill
 - g) Flonase – allergies
 - h) Naproxyn – pain/inflammation
 - i) Ditropan – kidneys
 - j) Zantac – heartburn
 - k) Prilosec – heartburn indigestion
 - l) Altram – pain/inflammation
 - m) Claritin D – sinus problems
 - n) Lyrica –
 - o) Ferris Sulfate – anemia
 - p) Hemorrhoid cream
 - q) Immitrex – Migraines
 - r) Zocort – high cholesterol
 - s) Flexeril – muscle pain & spasms (3x/day)
 - t) Cymbalta – diabetes

- u) Klonitin – anxiety
 - v) Resterol – sleep
 - w) Nuerotin – nerve pain
 - x) Lydoderm patches ordered for back but not filled yet due to insurance.
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.
 11. Claimant is able to read/write/perform basic math skills.
 12. Claimant last worked as a cashier in a gas station. The job duties required standing, lifting up to 25 lbs., bending and stooping. Claimant left due to back pain and problems with feet.
 13. Claimant has prior employment experience as a crew member at various fast food restaurants, housekeeping in hospital and working quality control at a packaging plant.
 14. Claimant testified to the following physical limitations:
 - Sitting: 10-15 minutes and then back hurts
 - Standing: 10 minutes
 - Walking: not far at all
 - Bend/stoop: Cannot bend or stoop at all.
 - Lifting: Less than a gallon of milk.
 - Grip/grasp: has problems
 15. Claimant does not perform many household chores. Claimant is able to microwave meals like a pot pie.
 16. Claimant testified that her legs give out from under her in the shower. In addition, Claimant has difficulty getting out of the tub. Claimant’s mother helps her all the time. Claimant also needs help getting her pants on. Claimant’s mother washes and brushes her hair. Claimant’s mother also helps Claimant on and off with toilet because Claimant falls when she stands.
 17. Claimant was unable to walk to bus stop to get to hearing office and a three way telephone hearing was conducted instead.
 18. Claimant’s mother testified that Claimant’s legs give out all the time especially any time that Claimant tries to walk any distance and generally 6-12x/day. Mom gets her in and out of shower and up and off of toilet. In addition, Claimant’s mother testified that Claimant’s mental condition has progressively worsened. Claimant is experiencing nightmares. In addition, Claimant will start an activity, but five minutes later she isn’t interested. Contrast this with the fact that

Claimant was in the top 10 in her class in high school – she used to be able to read a book and watch tv at the same time and tell you what is going on in 10 places. Claimant cannot do this anymore.

19. The Department found that Claimant was not disabled and denied Claimant's application on January 19, 2010.
20. The Department received Claimant's request for a hearing on January 25, 2010.
21. Medical records examined are as follows:

5/10/10 Medical Exam Report (Exhibit 3, pp. 73-75)

DX: morbid obesity, major depression, hypertension, IDDM, GERD

RESPIRATORY: Labored breathing

MENTAL: Anxious

CLINICAL IMPRESSIONS: Deteriorating

PHYSICAL LIMITATIONS: Lifting less than 10 lbs occasionally, stand/walk less than 2 hours in an 8 hour day, sit less than 6 hours in an 8 hour day.

MENTAL LIMITATIONS: Sustained concentration, memory and following simple directions.

3/20/09 Psychiatric IME (Exhibit 2)

HX: Back pain affects ability to do things. Sleep is disturbed due to pain, appetite is fair and she feels helpless at times. The patient has diabetes, arthritis, chronic back pain and hypothyroidism.

EMOTIONAL RX: The patient's mood is anxious and her affect is full ranged and appropriate.

MEDICAL SOURCE STATEMENT: The patient presented with only mild to moderate symptoms of depression, which should not cause any problems doing simple jobs or with her ability to appropriately interact with others.

DX: Depression, chronic pain, diabetes, arthritis and hypothyroidism. GAF 50-55. The prognosis is fair.

3/20/09 Internal Medicine IME (Exhibit 2)

COMPLAINTS: Diabetes, diabetic neuropathy, high blood pressure, heart conditions, high cholesterol, GERD, hypothyroidism, back pain with a pinched nerve and arthritis of different joints and depression.

HX: Diabetes not well controlled. Blurred vision lately and treating with an eye specialist. She has tingling and numbness of the lower extremities, ice cold feeling and burning sensation and pins and needles sensation in both legs. She was told she has diabetic neuropathy in her feet. She has frequent boils on her arms, abdomen and thighs requiring antibiotics in the past. She has muscle aches and joint pains and feels tired and exhausted on and off for the last few years. Pt has shortness of breath and chest pain and she has been taking Lisinopril and Lopressor for her chest pain and possible high blood pressure. Has chest pain off and on especially during anxiety attacks with several ER visits for chest pain. Occasional swelling in both legs with shortness of breath on

exertion. Also occasional headaches and dizziness. Occasional memory problems following mini stroke in 1/09. Diagnosed with GERD for 3-4 years and has frequent heartburn and stomach upset. Lower back pain last 5-6 years. CI was told that she has stenosis, bulged discs and pinched nerve. Sharp lower back pain frequently radiating to both legs down to the feet with numbness and tingling. Current back pain is 9/10 with frequent spasms. Pain in wrists, neck, and hands

MUSKULOSKELETAL: Moderate restriction of ROM of the lumbar spine.

MEDICAL SOURCE STATEMENT: Based upon today's examination, this claimant has the capacity for working 2-4 hours, part time jobs in view of her multiple medical conditions. The patient has some limitations in walking, standing, climbing stairs and ladders.

Counseling Center records (Exhibit 3, p. 72)

2/13/10: Major Depressive Disorder, recurrent, severe without psychotic features.

1/21/10: She was hospitalized in December because of suicidal ideation but she has not had an attempt. Today was one year anniversary of her rape and it has been a difficult month.

6/9/09:

HX: symptoms of diabetes, back & neck pain, arthritis, stress, neuropathy, irregular heartbeat, feet pain, high cholesterol, blurry vision, dizziness & lightheadedness, difficulty concentrating, legs drop out from under her without warning, anxiety, depression, panic attacks, chest pains, rapid speech (sometimes difficult to understand), disrupted sleep, stroke 5 months ago (friend raped her multiple times during the stroke and waited until night to call ER), lack of motivation, tremors, obsessive thoughts, feelings of unreality, sexual problems, disassociation, constant tiredness, grief, nightmares, and flashbacks with depression for about 5 years and anxiety and panic attacks for 6 months.

MEDICAL HX: Bulging disks between L4-L5.

GAF: 48

HIGHEST GAF PAST YEAR: 50

12/31/09 – 1/6/09 Psychiatric Hospital Admission (Exhibit 3, p. 54)

COMPLAINT: Pt came as a walk in complaining of suicidal ideation increasing over the past week reporting that she was raped on 1/21/09.

ADMISSION DX: Major depression, recurrent, GAF 20

DISCHARGE GAF: 60

11/23/09 MRI of Brain (Exhibit 1, p. 16)

Adenoidal Enlargement. Mild mucosal thickening at the right maxillary sinus.

7/16/09 Psychiatric Evaluation (Exhibit 1, p. 14)

HX: When she gets very upset or stressed she shakes and is not able to stop. Difficulty falling asleep at night. Mood is depressed. Appetite has increased.

CLINICAL FORMULATION: Pt has several significant medical issues who comes in with symptoms consistent with major depressive disorder and generalized anxiety. She

has increased speech and some racing thoughts and mood swings but no clear cut symptoms of a bipolar disorder.

DX: Major depressive disorder, recurrent, severe without psychotic features. GAF 55

6/09 Psychiatric Eval (Exhibit 1, p. 10)

CI meets the criteria for Major Depressive Disorder, Recurrent, Moderate with Secondary as Posttraumatic Stress Disorder, Chronic, r/o Panic Disorder with symptoms of diabetes, back & neck pain, arthritis, stress, neuropathy, irregular heartbeat (sinus tachycardia), feet pain, high cholesterol, too high of kidney protein level, blurry vision, dizziness & lightheadedness, difficulty concentrating, legs drop out from under her without warning (happens a lot in the shower), anxiety, depression, panic attacks, chest pains, rapid speech (sometimes difficulty to understand), disrupted sleep, stroke, lack of motivation, tremors, obsessive thoughts, feelings of unreality, sexual problems, disassociation (spaces out a lot), always feels starving, constant tiredness, grief, nightmares, and flashbacks for 5 years.

Chiropractic Doctors Notes (Exhibit 3, p. 41)

7/9/04 - 6/18/08

6/18/08 COMPLAINTS: Pt complaints of spasm and soreness in upper back, mid back, neck and lower back.

PHYSICAL EXAM: reduced intersegmental motion of the cervical spine, thoracic spine and lumbar spine. Palpation exam indicates spasm and tenderness of the paracervical muscles bilaterally; spasm and tenderness of the Trapezius muscles bilaterally; spasm and tenderness of the Paradorsal muscles bilaterally; spasm and tenderness of the paralumbar muscles bilaterally

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 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). 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 is not currently working. 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 diabetes, chronic back pain, neuropathy, major depression, and GERD. Claimant also has been placed on

physical limitations by an independent medical examiner. 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 1.04 *Disorders of the Spine* and 12.04 *Affective Disorders* were reviewed. 20 CFR 404, Subpart P, Appendix 1, Rule 1.04 and 12.04. 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 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 major depressive disorder, diabetes, diabetic neuropathy, hypertension, arthritis, and pinched nerve in her back. Claimant's prior employment included gas station cashier, crew member at fast food restaurants, housekeeping and working at a packing plant. Given the requirement of standing, the jobs would be all be considered to be at the light exertional level. Claimant has been placed on physical limitations by her treating physician of standing/walking less than two hours in an eight hour day and sitting less than six hours in an eight hour day. The Independent Medical Examiner further determined that due to Claimant's multiple medical conditions, she would be limited to working 2-4 hours at a time part-time. Therefore, the undersigned finds the Claimant currently limited to less than sedentary work. Claimant is unable to return to past relevant work in any of the above listing 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 functionally below the level of sedentary work. Claimant's treating physician recommended physical limitations of lifting less than 10 lbs occasionally throughout the day and standing/walking less than two (2) hours per eight hour day. In addition, the independent medical examiner found that given Claimant's wide range of medical impairments, she would be unable to work more than part time 2-4 hours at a time.

In addition, Claimant's physician indicated that Claimant suffers from limitations in sustained concentration, memory and following simple directions. Claimant has been hospitalized in the past year for suicidal ideation as a result of her ongoing depression and entered into the hospital with a GAF of 20. Claimant's treating counselor assigned her a GAF of 48 which indicates "serious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) OR any serious impairment in social, occupational, or school functioning (e.g., no friends, unable to keep a job)." Finally, Claimant and her mother both testified credibly that Claimant has difficulty standing and her legs give out on her throughout the day. Claimant requires help from her mother in showering and using the rest room.

Claimant at thirty-one (31) is considered a *younger individual*; a category of individuals in age group 18-44 when age is a more advantageous factor for making adjustment to other work. "It is usually not a significant factor in limiting such individual's 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, Appendix 2 to Subpart P, Rule 201.20. Claimant has a high school education and her previous work experience is unskilled.

The Administrative Law Judge finds that the combination of Claimant's mental and physical impairments and limitations have a major effect upon claimant's ability to perform basic work activities. Claimant is unable to perform the full range of activities for even sedentary work as defined in 20 CFR 416.967(a) because of the nature of the limitations. The total impact caused by the combination of medical problems suffered by the claimant must be considered. The combination of claimant's impairments result in a severe impairment which limits claimant's ability to work. 20 CFR 404.1529.

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.

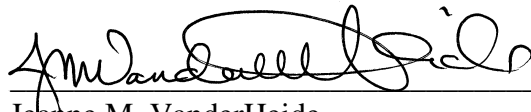
In this case, there is sufficient evidence to support a finding that the combination of Claimant's impairments is disabling her under SSI disability standards. This Administrative Law Judge finds the Claimant is "disabled" for purposes of the MA and SDA programs.

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 and the State Disability Program 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 July 29, 2009 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 July 2011.



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

Date Signed: June 29, 2010

Date Mailed: June 29, 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

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