

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.: 2010-3889

Issue No.: 2009

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

January 13, 2010

Wayne County DHS (82)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a hearing was conducted from Redford, Michigan on Wednesday, January 13, 2010. The Claimant appeared and testified, along with [REDACTED]. The Claimant was represented by [REDACTED] of [REDACTED]. [REDACTED] appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA-P") benefit 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. The Claimant submitted an application for public assistance seeking Medical Assistance ("MA-P") benefits retroactive for May 2009 on June 11, 2009.

2. On June 23, 2009, the Medical Review Team (“MRT”) determined the Claimant was not disabled. (Exhibit 1, pp. 1, 2)
3. On June 25, 2009, the Department sent an Eligibility Notice to the Claimant informing her that she was found not disabled.
4. On September 17, 2009, the Department received the Claimant’s timely written Request for Hearing. (Exhibit 3)
5. On November 2, 2009, the State Hearing Review Team (“SHRT”) determined the Claimant not disabled. (Exhibit 5)
6. The Claimant’s alleged physical disabling impairment(s) are due multiple sclerosis, arthritis, high blood pressure, diabetes type II, hypertension, congestive heart failure, blurred vision, and obesity.
7. The Claimant has not alleged any mental disabling impairment(s).
8. At the time of hearing, the Claimant was 56 years old with a [REDACTED] birth date; was 6’ in height; and weighed 290 pounds.
9. The Claimant is a high school graduate with some college with a work history as a secretary and/or receptionist.
10. The Claimant’s impairment(s) has lasted, or is expected to last, continuously for a period of 12 months or longer.

CONCLUSIONS OF LAW

The Medical Assistance (“MA”) program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services (“DHS”), formerly known as the Family Independence Agency, pursuant to MCL 400.10 *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”).

Disability is defined as 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(a) The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913 An individual’s subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a) Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant’s pain; (2) the type/dosage/effectiveness/side effects of any medication the applicants takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant’s pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3) The applicant’s pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2)

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1) The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4) If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4) If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945 Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1) An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4) In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv) In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a) An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a) The individual has the responsibility to provide evidence of prior work experience; efforts to work;

and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6)

In addition to the above, when evaluating mental impairments, a special technique is utilized. 20 CFR 416.920a(a) First, an individual's pertinent symptoms, signs, and laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a(b)(1) When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a(e)(2) Functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.*; 20 CFR 416.920a(c)(2) Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality is considered. 20 CFR 416.920a(c)(1) In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of functional limitation. 20 CFR 416.920a(c)(3) The degree of limitation for the first three functional areas is rated by a five point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4) A four point scale (none, one or two, three, four or more) is used to rate the degree of limitation in the fourth functional area. *Id.* The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. *Id.*

After the degree of functional limitation is determined, the severity of the mental impairment is determined. 20 CFR 416.920a(d) If severe, a determination of whether the impairment meets or is the equivalent of a listed mental disorder is made. 20 CFR

416.920a(d)(2) If the severe mental disorder does not meet (or equal) a listed impairment, an individual's residual functional capacity is assessed. 20 CFR 416.920a(d)(3)

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Claimant is not involved in substantial gainful activity therefore is not ineligible for disability under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b) An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c) Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b) 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.

Id. The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely

from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985) An impairment qualifies as non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985)

In the present case, the Claimant alleges physical disability based upon multiple sclerosis, arthritis, high blood pressure, and diabetes type II, hypertension, congestive heart failure, blurred vision, and obesity.

On [REDACTED], the Claimant was admitted to the hospital with complaints of chest pain and left side weakness. The Claimant was discharged two days later with the diagnoses of acute cerebrovascular accident, uncontrolled diabetes, and acute uncontrolled hypertension.

On [REDACTED], the Claimant was admitted to the hospital with complaints of unsteady gait and falling. The discharge summary notes treatment for a stroke the prior week. Ultimately, the Claimant was discharged on [REDACTED] [REDACTED] with the diagnoses of atypical demyelization of corpus callosum (likely multiple sclerosis), hypertension, acute and acute renal failure with secondary diagnoses of hypertension, diabetes, congestive heart failure with an ejection fraction of 60%, cerebrovascular accident with left-sided weakness, dyslipidemia, asthma, and chronic obstructive pulmonary disease.

On or about [REDACTED], the Claimant's treating physician completed a Medical Examination Report on behalf of the Claimant. The current diagnoses were multiple sclerosis, congestive heart failure, obesity, poorly controlled diabetes, and Stage 1 hypertension. The physical examination found an unsteady gait, easily fatigued, chronic eye drainage, muscle weakness, slurred speech, and confusion. The Claimant's condition was listed as deteriorating and she was found unable to lift/carry any weight; stand and/or walk less than 2 hours in an 8

hour workday; sit about 6 hours during an 8-hour workday; and unable to perform repetitive actions with any extremity. The Claimant was unable to stand/walk unassisted requiring a wheelchair. The Claimant's limitations were expected to exceed 90 days. In addition, the Claimant's memory and ability to sustained concentration were also limited.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented some medical evidence establishing that she does have some physical limitations on her ability to perform basic work activities. The medical evidence has established that the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. The Claimant's impairment(s) or the effects thereof, have not lasted continuously for twelve months, (although the receipt of treatment will likely continue beyond the 12 month period) however, in light of the *de minimis* standard the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Claimant has alleged physical disabling impairment(s) due to multiple sclerosis, arthritis, high blood pressure, and diabetes type II, hypertension, congestive heart failure, blurred vision, and obesity.

Listing 11.00 discusses neurological disorders to include multiple sclerosis. In order to meet 11.09, an individual must establish:

- A. Disorganization of motor function, or
- B. Visual or mental impairment, or
- C. Significant, reproducible fatigue of motor function with substantial muscle weakness on repetitive activity,

demonstrated on physical examination, resulting from neurological dysfunction in areas of the nervous system known to be pathologically involved by the multiple sclerosis process.

Disorganization of motor function means significant and persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movements, or gait and station. 11.04B Visual impairment under this listing requires a showing of a loss of visual acuity meaning the remaining vision in the better eye after best correction is 20/200 or less; or contraction of the visual field in the better eye; or a loss of visual efficiency of 20 percent or less in the better eye after best correction.

In this case, the objective findings establish that the Claimant has multiple sclerosis resulting in disorganization of motor function in two extremities as well as the inability to perform gross and/or dexterous movements as well as disorganization of gait and station. The Claimant is unable to ambulate and requires a wheelchair. In addition, the Claimant's muscle fatigue when transferring to and from her wheelchair is also medically documented. The Claimant's condition has lasted and is expected to last continuously for a period of 12 months or longer. In light of the foregoing, it is found that the Claimant's impairment(s), or combination thereof, meets or is the equivalent to, a listed impairment within listing 11.00 specifically, 11.09. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required.

DECISION AND ORDER

The Administrative Law Judge, based upon the findings of fact and conclusions of law, finds the Claimant disabled for purposes of the Medical Assistance program.

It is ORDERED:

1. The Department's determination is REVERSED.

2. The Department shall initiate review of the June 11, 2009 application to determine if all other non-medical criteria are met and inform the Claimant and her representative in writing of the determination in accordance with department policy.
3. The Department shall supplement for any lost benefits the Claimant was entitled to receive if otherwise eligible and qualified in accordance with department policy.
4. The Department shall review the Claimant's continued eligibility in March 2011 in accordance with department policy.

Colleen M. Mamelka

Colleen M. Mamelka
Administrative Law Judge
For Ishmael Ahmed, Director
Department of Human Services

Date Signed: 2/09/2010

Date Mailed: 2/09/2010

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 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to the Circuit 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.

CMM/jlg

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