# STATE OF MICHIGAN MICHIGAN ADMINISTRATIVE HEARING SYSTEM ADMINISTRATIVE HEARINGS FOR THE DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No. 2011-19989 Issue No. 2009, 4031 Case No.

Hearing Date: June 23, 2011

Wayne (17)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

# **HEARING DECISION**

This matter is before the undersigned Admi nistrative Law Judge pursuant to Michigan Compiled Laws (MCL) 400.9 and 400.37 and Claim ant request for a hearing. After due notice, a telephone hearing was conducted on June 23, 2010. Claimant appeared and testified at the hearing.

Worker, appeared and testified on behalf of the Department of Human Services (DHS).

# **ISSUE**

Whether Cla imant's disab ility meets the medical criteria for elig ibility for Medical Assistance (MA or Medicaid) and State Disability Assistance (SDA) benefits?

## FINDINGS OF FACT

The Administrative Law Judge, based on competent, material and substantial evidence in the record and on the entire record as a whole, finds as fact:

- 1. On April 6, 2010 Claimant applied for MA and SDA benefits.
- 2. Claimant's impairments hav e been medically diagnosed as thyroid condition/Graves' disease, high blood pressure and arthritis.
- 3. Claimant's physical symptoms are joint pain, tiredness, weakness, and constant thirst. Claimant testified she takes fifteen thyroid medications and Motrin.
- Claimant's impairments have lasted for a continuous period of more than 12 months.

- 5. Claimant is 5'9" and weighs 170 lbs.
- 6. Claimant is 55 years of age. Her date of birth is
- 7. Claimant has a high school diploma. She has no further education or training.
- 8. Claimant is able to read, write and perform basic math skills.
- 9. Claimant worked as a home day care worker. She has not worked since 1996.
- 10. Claimant testified to the following physical limitations:
  - Sitting: uncomfortable after one hour.
  - Standing: 30-40 minutes at a time.
  - Walking: 50 ft.
  - Bending: Claimant experiences pain with bending.
  - Lifting: Claimant cannot lift more than 5 lbs.
- 11. Claimant lives with her sister and her daughter.
- 12. Claimant performs limited household chores. She can clear the table and was h dishes, and use a vacuum cleaner. She needs her daughter's help with cooking, laundry and grocery shopping. She does no yard work and has no hobbies.
- 13. Regarding activities of daily living, Claim ant testified she gets up in the morning, makes her own breakfast, and goes to the livi ng room and sits in a chair. There, she watches television and rests. She has no social activities outside the home.
- 14. On January 10, 2011, Claimant filed a Request for a Hearing with DHS.
- 15. On March 9, 2011, DHS determined that Claimant was not disabled and denied her application for MA and SDA benefits.
- 16. Medical records examined are as follows, in part:



- 1. Multiple joint pains. She ha s decreased range of motion of the shoulders as well as the knees. She has normal range of motion of the lumbar spine, cervical spin e, and both hands and wrists. She has decreased grip and pi ncer grasp in the hands. She is able to write legibly. Muscle rigidity is noted in the upper and lower extremities. There is also right upper ext remity tremor, which is intermittent. Her gait is slow. Etio logy of the joint pains is unclear at this time.
- 2. Hypertension, poorly controlled. It is asymptomatic other than dizziness.

Chief complaint: bilateral knee pain, worse at night, pain intensity 6, 7-10, reduced activity due to knee pain.

Current diagnoses: osteoarthritis ( degenerative joint disease), high blood pressure, low potassium and hypothyroidism.

Physical examination: crepitation in left knee exam and limitation of movement.

Clinical impression: stable.

Physical limitations: limited due to pain, diagnoses expected to last more than ninety days, lifting and carrying limited to occasional ten lb., sitting six hours in an eight-hour workday, restrictions based on extreme pain with ambulation.

Medications: Calan (high blood pressure medication), Synthroid (overactive thyroid medication), Lopressor (high blood pressure), Dyazide (high blood pressure), and Motrin.

#### CONCLUSIONS OF LAW

MA was established by Title XIX of the U.S. Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). DHS administers MA pursuant to MCL 400. 1 et seq., and MCL 400.105. Department polic ies are found in Bridge s Administrative Manual (BAM), Bridges Eligibility Manual (BEM) and Reference Tables Manual (RFT). These manuals are available online at <a href="https://www.michigan.gov/dhs-manuals">www.michigan.gov/dhs-manuals</a>.

SDA provides financial assistance for disabled persons and is established by 2004 Michigan Public Acts (PA) 344. DHS administers SDA pursuant to MCL 400.10 *et seq.*, and Michigan Administrative Code Rules 40 0.3151-400.3180. Department policies are found in BAM, BEM and RFT. *Id.* 

Federal regulations require that DHS mu st use the same operative definition for "disabled" as used for Supplem ental Security Income (SSI) benefits 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 de terminable p hysical or m ental 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 indiv idual is disabled, 20 CF R 416.920 requires the finder of fact to follow a sequential evaluation process by which current work activity; the severity of impairment(s); residual fu nctional c apacity, and voca tional 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 sequent ial evaluation. If the fact finder finds disability at a particular step in the process, then evaluation under a subsequent step is not necessary.

# 1. Current Substantial Gainful Activity

Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing signific ant physical or mental activities. 20 CFR 416.972(a). "G ainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized. 20 CF R 416.972(b). Generally, if an individual has earnings from employ ment or self-employment above a specific level set out in the regulations, it is pres umed that she or he has the demonstrated ability to engage in SGA. 20 CFR 416.974 and 41 6.975. If an individual engages in SGA, she or he is not disabled regardless of how severe the physical and mental impairments are and regardless of age, education and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

In this case, Claimant has not worked for fifteen years. Therefore, I find that Claimant is not disqualified at the first step and I proc eed to the second required step of the M A analysis.

# 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 impairm ent is an impair ment which significantly limits a n ind ividual's p hysical or mental ability to perform basic work activities. Basic work activities mean the abilities and apt itudes necessary to do mos t 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 supervi sion, co workers and u sual work situations; and
- (6) Dealing with chang es i n a routine work setti ng. 20 CF R 416.921(b).

The purpose of the second st ep in the sequential ev aluation process is to screen out claims lacking medical merit. The U.S. Sixth Circuit Court of Appeals, in *Salmi v Secretary of Health and Human Services*, 774 F2d 685 (6 <sup>th</sup> 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-sever e. *Higgs v Bowen*, 880 F.2d 860, 862 (6 <sup>th</sup> Cir. 1988); *Farris v Sec'y of Health & Human Servs*, 773 F.2d 85, 90 (6<sup>th</sup> Cir. 1985).

In this case, Claimant presented medical ev idence of osteoarthritis, Graves' diseas e and high blood pressure. Claim ant had crepitation in the left knee upon physic al examination by her tr eating physician. Claimant's ph ysician imposed restrictions of occasional lifting only, and no lifting over 10 lbs. He reported that she had limited range of motion, and Claim ant reported to him that she had extr eme pain with ambulation. The medical evidence establishes that Claimant has physical impairments that have more than a minimal effect on basic work activities, and Claimant's impairments have already lasted for more than twelve months. I have also taken into consider ation that Claimant's thyroid and high blood pressure conditions began fifteen years ago, and her arthritis began five years ago.

# 3. Listed Impairment

After reviewing the criteria of C FR Title 20, Appendix 1 to Subpart P of Part 404 – Listing of Impairment s, Listing 1.02, *Major dysfunction of a joint(s) (due to any cause)*, the undersigned finds that Claim ant's medical records substantiate that the Claimant's medical impairments meet or are medically equivalent to the listed requirements. 20 CFR 404 §1.02 describes Major Joint Dysfunction as follows:

1.02 Major dysfunction of a joint(s) (due to any cause): Characterized by gross a natomical defo rmity (e.g., s ubluxation, contra cture, bony or fibrous an kylosis, instability) and ch ronic joint pain and stiffness with signs of limitation of m otion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:

A. Involvement of one major peripheral weight-bearing joint (*i.e.*, hip, knee or ankl e), result ing in inability to ambulate effectively, as defined in 1.00B2b;

or

B. Involvement of one majo r peripheral joint in each u pper extremity (*i.e.*, shoulder, elbo w, o r wrist-han d), resultin g in inability to perform fine and g ross movement s effectively, as d efined i n 1.00B2c. 20 CFR 404, Appendix 1 to Subp art P, Listing o f Impairments, Sec. 1.02, p. 9.

In this case, Claimant has osteoarthritis which is causing hand, hip, and knee joint pain with extreme pain on ambulation. Claimant has difficulty standing, walking, bending, lifting and carrying. Claimant also has hypothyroidism and high blood pressure, and complains of constant tiredness and weak ness. Claimant is under the care of an internal medicine primary care physician,

I have considered all of the te stimony and evidence in this case as a whole in reaching my decision. I note that Cla imant has had medical attention over the past year, as she takes prescribed medication on an ongoing basis. Both her primary care physician and the Department's examining physician have made significant clinical observations. The Department's examining physician was awar e that Claimant takes medications but made no observations as to whether the medications were appropriate. I find and determine that Claimant's medical history and her testimony are consistent with the medical opinions, and I accept her testimony.

I note at this point that there are no record sof medical treatment in the record, and I took this into consideration in making my decision, as required by 20 CFR 404, Subpart P, Appendix 1, Section 1. 00H, Documentation-When there is no record of ongoing treatment:

Some individuals will not have rece ived ongoing treatment or have an ongoing relationship with the medical community despite the existence of a severe impairment(s). In such cases, evaluation will be made on the basis of the cu rrent o bjective me dical evidence and other available evidence, ta king into consideration the in dividual's medical history, symptoms, and medical source opinions. Even though an individual who

does not receive tre atment may not be able to show an impairment that meets the criteria of one of the mu sculoskeletal listings, the individual may have a n impairment(s) equivalent in severity to one of the listed impairments or be disabled based on consideration of his or her residual functional capacity (RFC) and age, education and work experience. 20 CFR 404, Subpart P, Appendix 1, Sec. 1.00H.

Considering all of the above, and inc luding Claimant's age, education and work experience, the undersigned finds the medi cal reports, Claimant's history and her testimony substantiate that the Claimant's orthopedic impairments meet or are medically equivalent to the listing requirem ents of 1.02(B). 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 regard to the fourth or fifth steps.

In this case, there is sufficient evidence to support a finding that Claimant's impairment has disabled her under the Feder al SSI disability standards. This Administ rative Law Judge finds Claimant is disabled for purposes of the MA program of the State of Michigan.

# **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusion sof law, decides that the claim ant is medically disabled from all work as of April 6, 2010; that she is eligible for MA and retroactive MA benefits; and, that she is automatically eligible also for SDA benefits.

Furthermore, the Department is ordered to initiate a review of Claimant's April 2010, application, if not done previous ly, to deter mine Claimant's non-medi cal eligibility for MA. The Department shall inform Claimant of its determination in writing. This case shall be reviewed in June, 2012.

Jan Leventer
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: June 27, 2011

Date Mailed: June 27, 2011

**NOTICE**: Administrative Hearings may or der 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 Hear ings will not orde rarehearing 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 ti mely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.



