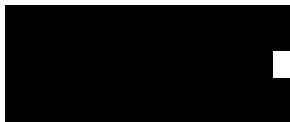


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No. 2011-19989
Issue No. 2009, 4031
Case No. [REDACTED]
Hearing Date: June 23, 2011
Wayne (17)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to Michigan Compiled Laws (MCL) 400.9 and 400.37 and Claimant [REDACTED] request for a hearing. After due notice, a telephone hearing was conducted on June 23, 2010. Claimant appeared and testified at the hearing. [REDACTED] Assistance Payments Worker, appeared and testified on behalf of the Department of Human Services (DHS).

ISSUE

Whether Claimant's disability meets the medical criteria for eligibility 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 have 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.
4. 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 [REDACTED].
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 wash 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, Claimant testified she gets up in the morning, makes her own breakfast, and goes to the living 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:

[REDACTED]

[REDACTED]

1. Multiple joint pains. She has decreased range of motion of the shoulders as well as the knees. She has normal range of motion of the lumbar spine, cervical spine, and both hands and wrists. She has decreased grip and pincher 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 extremity tremor, which is intermittent. Her gait is slow. Etiology 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 policies are found in Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM) and Reference Tables Manual (RFT). These manuals are available online at www.michigan.gov/dhs-manuals.

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 400.3151-400.3180. Department policies are found in BAM, BEM and RFT. *Id.*

Federal regulations require that DHS must use the same operative definition for “disabled” as used for Supplemental 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 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 finder 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. If the 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 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 or he has the demonstrated ability to engage in SGA. 20 CFR 416.974 and 416.975. 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 proceed to the second required step of the MA 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 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 medical merit. The U.S. Sixth Circuit Court of Appeals, in *Salmi v Secretary of Health and Human Services*, 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, Claimant presented medical evidence of osteoarthritis, Graves' disease and high blood pressure. Claimant had crepitation in the left knee upon physical examination by her treating physician. Claimant's physician imposed restrictions of occasional lifting only, and no lifting over 10 lbs. He reported that she had limited range of motion, and Claimant reported to him that she had extreme 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 consideration 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 CFR Title 20, Appendix 1 to Subpart P of Part 404 – Listing of Impairments, Listing 1.02, *Major dysfunction of a joint(s) (due to any cause)*, the undersigned finds that Claimant'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 anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion 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 ankle), resulting in inability to ambulate effectively, as defined in 1.00B2b;

or

B. Involvement of one major peripheral joint in each upper extremity (*i.e.*, shoulder, elbow, or wrist-hand), resulting in inability to perform fine and gross movements effectively, as defined in 1.00B2c. 20 CFR 404, Appendix 1 to Subpart P, Listing of 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 weakness. Claimant is under the care of an internal medicine primary care physician, [REDACTED].

I have considered all of the testimony and evidence in this case as a whole in reaching my decision. I note that Claimant 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 aware 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 records of 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 received 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 current objective medical evidence and other available evidence, taking into consideration the individual's medical history, symptoms, and medical source opinions. Even though an individual who

does not receive treatment may not be able to show an impairment that meets the criteria of one of the musculoskeletal listings, the individual may have an 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 including Claimant's age, education and work experience, the undersigned finds the medical reports, Claimant's history and her testimony substantiate that the Claimant's orthopedic impairments meet or are medically equivalent to the listing requirements 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 Federal SSI disability standards. This Administrative 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 conclusions of law, decides that the claimant 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 previously, to determine Claimant's non-medical 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

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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.

JL/cl

cc:

