

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

IN THE MATTER OF:



Reg. No. 2011-29227
Issue No. 2009
Case No. [REDACTED]
Hearing Date: June 27, 2011
Wayne (82)

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 27, 2011. Claimant appeared and testified at the hearing. [REDACTED] appeared and testified as a witness for Claimant. [REDACTED], Eligibility Specialist, 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 MA-retroactive 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 March 8, 2011, Claimant applied for MA and MA-retroactive benefits.
2. Claimant's impairments have been medically diagnosed as arthritis of the back, knees and feet, gout of the feet, chronic asthma, use of one eye only, heart murmur, diverticulitis, gastroesophageal reflux disorder, anxiety and depression.
3. Claimant's physical symptom of arthritis is extreme pain in the back, knees and feet.

4. Claimant is under the care of the [REDACTED] and has seen four different doctors in the past year, including a [REDACTED]. She is taking medications for pain (Vicodin, 700 mg.), anxiety and depression (Cymbalta, Seroquel, and Bupropion HCL), high blood pressure (Lisonopril and Lopressor), sleep (Trazodone), GERD (gastroesophageal reflux disorder)(Metoclopramide), heart [REDACTED] (Bupropion Nitrosol), and asthma (Prednisone).
5. Claimant will continue treatment with a new health care provider, [REDACTED] shortly.
6. Claimant's impairments have lasted for a continuous period of more than 12 months.
7. Claimant is 5'7" tall and weighs 174 lbs.
8. Claimant is 62 years of age. Her date of birth is [REDACTED].
9. Claimant completed the eleventh grade of high school. She has no further education or training.
10. Claimant is able to read and write, and cannot perform basic math skills.
11. Claimant worked as a babysitter. She has not worked since 1966.
12. Claimant testified to the following physical limitations:
 - Sitting: uncomfortable after one hour.
 - Standing: uncomfortable after one-half hour.
 - Sit-to-stand: difficulty getting up from a couch or out of a car.
 - Climbing: cannot use stairs.
 - Walking: one-half block.
 - Lifting: no more than five lbs.
13. Claimant lives with her two daughters and one grandson.
14. Claimant performs limited household chores. She can clear the table and wash dishes, and make her own bed. Her cooking consists of sitting in a chair and supervising her daughters' cooking activity. She does not drive. She needs help with grocery shopping, and cannot do any yard work, which she previously performed.

15. Claimant's hobbies are playing with her grandson and taking a walk. She has no social activities outside the home.
16. Claimant smokes one pack of cigarettes per day.
17. Regarding activities of daily living, Claimant testified she gets up at 4:00 a.m., showers, makes her bed, occasionally makes pancakes, and talks to her daughters. For the rest of the day, she sits on the couch in the living room and watches television, or she sits on the front porch and greets friends as they walk by.
18. On April 14, 2011, Claimant filed a Request for a Hearing with DHS.
19. On May 6, 2011, DHS determined that Claimant was not disabled and denied her application for MA benefits.
20. Medical records examined are as follows:



Discharge diagnosis: diverticulitis and supraumbilical hernia.
Treatment in hospital: Rocephin and Flagyl (infection medications), clear liquid diet.
Discharge instructions: Flagyl and Ciproflaxin (infection medications), Norco 5 (pain medication).

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 Bridge's Administrative Manual (BAM), Bridge's Eligibility Manual (BEM) and Reference Tables Manual (RTM). These manuals are available online at www.michigan.gov/dhs-manuals.

Federal regulations require that DHS must use the same operative definition for "disabled" as used by the Federal government 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 (age, education, and work experience) are assessed, in that order. A determination that an individual is disabled can be made at any step. If the fact finder finds disability at a particular step in the process, it is not necessary to continue the evaluation through subsequent steps.

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 Federal 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 forty-five years. Therefore, I find that Claimant is not disqualified at the first step and I proceed to the second step requirement 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, coworkers 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 gave credible and un rebutted testimony that she has arthritis with extreme pain in the back, knees and feet, gout in the feet, high blood pressure, anxiety and depression, a heart murmur, use of only one eye, and asthma. Claimant gave credible and un rebutted testimony that she has been to the doctor four times in the past year. Her numerous prescriptions attest to the fact that she is under the care of at least one type of physician, such as an internist, and she testified she sees a psychiatrist as well. She also testified she has not worked since 1966. Her arthritis began in 1980 when she was thirty-two years old, and it has worsened over time.

Claimant gave credible and un rebutted testimony that at the present time she cannot cook, she does grocery shopping only with the assistance of her daughters, she cannot perform yard work, she cannot go up and down stairs, she has difficulty sitting-to-standing, and she is inactive essentially all day long. Furthermore, she can walk only one-half block, she can stand for only one-half hour, and she can carry only 5 lbs., which is the weight of one gallon of milk.

In addition, Claimant takes a variety of medications, most notably in this context the pain medication Vicodin, which is a narcotic medication used for moderate to severe pain.

Based upon the findings of fact and conclusions of law above, I find and conclude that Claimant’s testimony, including her testimony about her medical treatment and use of prescription drugs, establishes that Claimant has physical impairments that have more than a minimal effect on basic work activities, and Claimant’s physical impairments have already lasted for more than twelve months.

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 arthritis which is causing back, knee and foot pain with extreme pain on ambulation. Claimant has difficulty standing, walking, bending, lifting herself up from a seated position, and carrying. Claimant has been under the care of [REDACTED] for at least one year.

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. I find and determine that Claimant's medical history and her testimony are consistent with the medical treatment she reports, and I accept her testimony.

I note at this point that there are no records of medical treatment in the hearing record, other than the record of a three-day hospitalization for diverticulitis. 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 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 March 8, 2011; that she is eligible for MA and retroactive MA benefits; and, that she is automatically eligible also for SDA benefits if she should make an application for such benefits.

Furthermore, the Department is ordered to initiate a review of Claimant's March 8, 2011, application, if not done previously, to determine Claimant's nonmedical eligibility for MA. The Department shall inform Claimant of its determination in writing. This case shall be reviewed in July, 2012.



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

Date Signed: June 29, 2011

Date Mailed: June 29, 2011

2011-29227/JL

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:

