

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. 2006-20542
Issue No. 2009; 4031
Case No: [REDACTED]
Hearing Date:
January 24, 2007
Oakland County DHS

ADMINISTRATIVE LAW JUDGE: Judith Ralston Ellison

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. After due notice, a hearing was held on January 24, 2007. The Claimant appeared at the Department of Human Services (Department) in Oakland County.

The closure date was waived to obtain additional medical information. The undersigned issued an Interim Order for updated medical information; and no new medical records were received from January 24, 2007 to February 9, 2008. The record closed. This matter is now before the undersigned for final decision.

ISSUES

Whether the Department properly determined the Claimant is "not disabled" for purposes of Medical Assistance based on disability (MA-P) and State Disability Assistance (SDA) programs?

FINDINGS OF FACT

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

- (1) On July 17, 2006 the Claimant applied for MA-P and SDA.
- (2) On July 20, 2006 the Department denied the application: and on October 17, 2006 the SHRT denied the application finding evidence for the ability to perform light work such as past relevant work as a PBX operator.
- (3) On August 10, 2006 the Claimant filed a timely hearing request to protest the Department's determination.
- (4) Claimant's date of birth is [REDACTED]; and the Claimant is fifty-seven years of age.
- (5) Claimant completed grade 11 and a GED; and can read and write English and perform basic math.
- (6) Claimant last worked in March 2001 as a PBX operator, and prior work history in GM assembly, janitor, and housekeeping.
- (7) Claimant has a medical history of Insulin Dependent Diabetes Mellitus (IDDM) for fifteen years with neuropathy of both hands/feet, pain in back, hip, thigh and leg, carpal tunnel syndrome left hand, depression with decrease in concentration, and sleep, and crying, paranoia, and isolation.
- (8) [REDACTED], in part:

April: MRI lumbar spine: IMPRESSION: degenerative changes at L4-5 and L5-S1. Central and lateral spinal stenosis at L4-5. Right paracentral disc protrusion at L5-S1. [REDACTED]. Department Exhibit (DE) 1, pp. 34-36.

October: Follow up. [In treatment since January 2005.] Diagnosis: S1 radiculopathy on right and left extremity and bilateral carpal tunnel syndrome. Doing much better and able to tolerate the pain and numbness much better. Neurologic Exam: [Within normal limits.] Except hand grip weakness due to carpal tunnel. Medications prescribed: Reglan, Vicodin, Valium, Lidoderm patches. Being treated by psychiatrist who prescribed Effexor. Re-evaluate in 3 months. [REDACTED]. Diplomate American Board of Psychiatry and Neurology. DE 1, pp. 11-17.

(9) [REDACTED], in part:

[REDACTED]: Internist's Exam: States can walk one block at street level, climb 14 stairs, stand for one-half hour and sit for sometime but with difficulty arising. Can do some housework like wash dishes, cook. Using back brace for last 2 months every day for 3-4 hours. Can make a fist, Good grip both hands. Can button buttons, open/close door, push/pull, and tie/untie shoes. Using both hands can lift 10 pounds from floor and carry 10-12 feet. States suffering from depression for last 4 years and takes medication. Memory is fair. Smoking 20 cigarettes a day for 24 years.

PHYSICAL EXAMINATION: HT 64", WT 159, BO 136/70, Vision with glasses right 20/40, left 20/40. HEENT, Neck, CVS, Chest, Abdomen, Skin, Extremities, Spine, Bones & Joints, Nervous System: [All within normal limits.] Except pain on lumbar movements, pain on movements of shoulder joints, restricted flexion of hip, left knee joint movement painful and some restriction with crepitation. Impaired pinprick and touch sensation both lower legs knee downward.

CONCLUSION: No significant functional limitations orthopedically. Evidence of diabetic neuropathy both lower legs. Lumbar spine x-rays: local osteoarthritis degenerative changes of posterior articular facet joints at L5-S1. Atherosclerotic vascular calcifications lower abdominal aorta and splenic artery. [REDACTED], [REDACTED]. DE 1, pp. 41-43.

[REDACTED]: [Based on evaluation at interview] The patient is able to acquire and use information, to demonstrate the ability to attend to task presented at testing, able to interact appropriately with examiner and examination, demonstrated ability to move and manipulate objects in coordinated manner, appeared to be able to care for self, ask questions and follow simple directions. DIAGNOSES: Axis I Dysthymic Disorder, Bereavement, Adjustment Disorder with depressed mood. [REDACTED],

Licensed Psychologist. DE 1, pp. 56-59; see also Claimant Exhibit 1, pp. 1-3 from [REDACTED].

[REDACTED]: MRI lumbar spine: IMPRESSION: Right paracentral L4-L5 disc herniation. Central disc protrusion/small disc Herniation L5-S1. [REDACTED]. Claimant Exhibit 4

[REDACTED]: EMG: peripheral neuropathy with distal degenerations. No evidence for bilateral cervical spine radiculopathy, [REDACTED].

(10) [REDACTED], in part:

Procedure Performed: Lumbar epidural block

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 CFR416.905

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.

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity (SGA). 20 CFR 416.920(b). In this case, under the first step, Claimant testified to not performing SGA since 2001/02. Therefore, Claimant is not disqualified for MA at step one in the evaluation process.

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 F2d 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 F2d 860, 862 (6th Cir. 1988); *Farris v Sec'y of Health & Human Servs*, 773 F2d 85, 90 (6thCir 1985).

In this case, the Claimant has presented sufficient medical evidence supporting physical/mental impairments that are more than minimal and would affect ability to perform basic work activities. The impairments have been medically established for the 12 duration period. See Finding of Facts 8-10.

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 impairment is a "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 (Listing) discusses the analysis and criteria necessary to a finding of a listed impairment. The undersigned's decision was based on Listing 9.08 *Endocrine System*. In this matter, the medical records establish the diagnosis of IDDM. There were no medical records of diabetic complications except neuropathy in the lower extremities. Evaluator Dr. Banerji opined that her diabetes was under good control

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 records did not establish marked limitations due to IDDM. Sequential evaluation under step four or five is necessary. 20 CFR 416.905.

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 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 you can do in a work setting. RFC is the most you can still do despite your limitations. All the relevant medical and other evidence in your case record applies in the assessment.

Here, the medical findings do establish mild dysfunction of the upper and lower extremities due to carpal tunnel and IDDM. The dysfunction of IDDM is not likely to be cured; and is likely to continue to incapacitate the Claimant. The undersigned did not find sufficient medical support to support the Claimant's physical/mental impairments that prevent the Claimant from returning to past relevant work as switchboard operator. The undersigned finds the Claimant to be "disabled" at step four and step five.

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 functional capacity," defined simply as "what can you 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 limitations.

20 CFR 416.960. *Felton v DSS*, 161 Mich App 690, 696-697, 411 NW2d 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 limited to sedentary work. See Finding of Facts 8-10. Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines 20 CFR 416.967(a):

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Claimant at fifty-seven is considered *advanced age*; a category of individuals age 55 and over. Under Appendix 2 to Subpart P: Table No. 1—Residual Functional Capacity: Maximum Sustained Work Capability Limited to Sedentary Work as a Result of Severe Medically Determinable Impairment(s), Rule 201.02, for advanced age, age 55 and over; education: grade 11 with GED; previous work experience, skilled or semi-skilled—skills not transferable; the Claimant is “disabled” per Rule 201.02.

It is the finding of the undersigned, based upon the medical data and hearing record that Claimant is “disabled” at the fifth step.

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 medical evidence to support a finding that Claimant's impairments meet the disability requirements under SSI disability standards, or prevents return to past relevant work for ninety days. This Administrative Law Judge finds the Claimant is "disabled" for purposes of the SDA program.

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.

It is ORDERED; the Department's determination in this matter is REVERSED.

Accordingly, The Department is ORDERED to initiate a review of the July 2006 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 August 2009.

/s/

Judith Ralston Ellison
Administrative Law Judge
For Ishmael Ahmed, Director
Department of Human Services

Date Signed: February 11, 2009

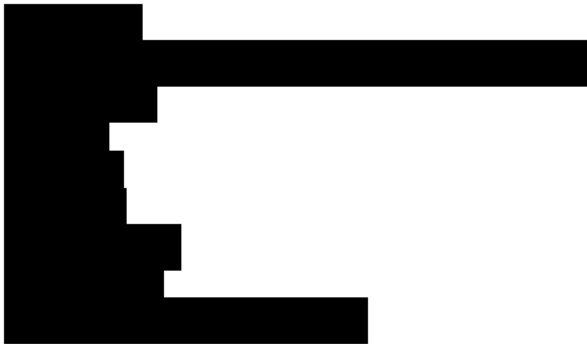
Date Mailed: February 17, 2009

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 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.

JRE

cc:

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