

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. 2007-11282
Issue No. 2009; 4031
Case No: [REDACTED]
Load No. [REDACTED]
Hearing Date:
August 13, 2008
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, the Claimant and his representative [REDACTED] appeared at a hearing held on August 13, 2008 at the Department of Human Services (Department) in Oakland County, District 2.

The closing date was waived. Additional medical records were obtained and reviewed by the State Hearing Review Team (SHRT). SHRT denied the application. The 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), retroactive MA-P for the months of February and March 2006 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 February 24, 2006 the Claimant applied for MA-P and SDA.

(2) On October 25, 2006 the Department denied the application; and on January 13, 2008 the SHRT guided by Vocational Rule 202.13 denied the application because medical records support the ability to perform a wide range of light work.

(3) On December 22, 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-four 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 [REDACTED] and [REDACTED] for a few days shoveling snow but was a truck driver for over 15 years.

(7) Claimant has a medical history of hepatitis C for ten years, chronic obstructive pulmonary disease (COPD), [REDACTED] back surgery, joint/muscle pain and lung masses.

(8) [REDACTED] in part:

HISTORY: Presented to ER with one week onset of difficulty breathing and cough and elevated fever. Former heroin addict and taking methadone. Testing found several necrotic masses left upper lobe and right lower lobe and left adenopathy. Evidence of emphysema. Biopsy and aspirations done without malignancy but inflammation and bacteria. Medically treated, he improved daily; and was discharged to continue methadone. Follow up with [REDACTED] as outpatient. [REDACTED]. Department Exhibit (DE) 1, pp. 16-26 and 49-53.

CURRENT DIAGNOSIS: Bilateral chest masses, infection??
CLINICAL IMPRESSION: Temporary disability. Return to work unknown. Can meet own needs at home. [REDACTED]. DE 1, pp. 54-55.

(9) [REDACTED], in part:

CURRENT DIAGNOSIS: LBP—DJD Spine; Bilateral lung opacity vs. mass; Emphysema.

HT 6'2", WT 191, BP 118/94.

NORMAL EXAMINATION AREAS: General, HEENT, Respiratory, Cardiovascular, Abdominal, Mental.

Musculoskeletal: positive tender LS and paraspinal left greater than right and warm. Neuro: positive guarded and midline scar otherwise normal, venicallar, decreased range of motion, FI/Ex and decreased rotation left/right.

CLINICAL IMPRESSION: Deteriorating.

PHYSICAL LIMITATIONS: Limited, expected to last over 90 days; Lifting/carrying up to 10 pounds 1/3 of 8 hour day, never 20 or over; stand and/or walk less than 2 hours in 8 hour day; sit less than 6 hours in 8 hour day; no assistive devices are needed; use of both hands/arms for simple grasping, reaching, pushing/pulling and fine manipulating. Use of both feet/legs for operating foot controls. Can meet own needs in home. MENTAL

LIMITATIONS: none. Medications Methadone, Motrin. [REDACTED]. DE 1, pp. 47-48.

(10) [REDACTED], in part:

HISTORY OF PRESENT ILLNESS: C/O lower back pain, on/off for last two to three years. Has pain in the knee and hip joints. Can walk less than one block at street level, stand for ten minutes, climb two flights of stairs, sit for 30 minutes. Can do light housework. Pain in both wrists but no limits of movement; and his grip is good in both hands, can button buttons, tie and untie shoelaces, write legibly, open door, push and pull and cook. Does not take any medications for joint pain.

PHYSICAL EXAMINATION: HT 72 ¾" WT 192, BP 147/81. Vision without glasses right 20/30, left 20/30. Fundi normal. HEENT, Neck, CVS, Chest, Abdomen, Skin, Extremities, Spine, Bones & Joints, Nervous system: [All within normal limits.] Except movements of spine are painful but no limitation of movement, complained of pain of lower back and hip, all movements of joints are painful but no limitations of movement. Grip 5/5 both hands. No ambulating difficulties, no loss of dexterity of fingers.

Pulmonary Function Test: normal. X-ray of chest: Mild bilateral pulmonary hyperinflation with linear scarring left mid lung and calcified granuloma. [REDACTED]. Claimant Exhibit A, pp. 2-9

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 SGA. 20 CFR 416.920(b). In this case, under the first step, Claimant testified to not engaging in SGA since [REDACTED]. Therefore, the Claimant is not disqualified from 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 (6th Cir 1985).

In this case, the Claimant has presented sufficient medical evidence to support a finding that Claimant has some physical limitations due to pain and lung abnormalities with complaints at hearing of shortness of breath. The Claimant acknowledges smoking cigarettes. The medical evidence has established that Claimant has physical impairments that have more than a minimal effect on basic work activities. The Claimant's impairments have lasted continually for 12 months. 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 impairments are 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 1.00 *Musculoskeletal System*; and Listing 3.00 *Respiratory System*.

In this case, 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 do not establish the severity or marked difficulties needed to meet a listing level impairment. The Claimant is ambulatory and there were no physical restrictions of either upper or lower extremities. The examining doctors opined the Claimant were clear to auscultation. Pulmonary function Test was normal. See Finding of Facts 8-10. 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.

Past relevant recent work was snow shoveling type "odd jobs." Previously the Claimant was a truck driver. No medical records established any limitations on returning to any type of work. Pain in and off itself is not disabling; and the Claimant does not take strong pain medications. The Claimant testified to not using any medications. For the time period from [REDACTED] until examinations ordered after hearing, in [REDACTED], the claimant did not apparently need or seek medical treatment. The [REDACTED] medical evaluations did not reveal significant limitations that prevented any work. But the Claimant has not performed truck driving for several years. The undersigned finds the Claimant cannot return to past relevant work. Evaluation under step five is necessary.

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 you 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 light work. Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines 20 CFR 416.969:

202.00 Maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s). (a) The functional capacity to perform a full range of light work includes the functional capacity to perform sedentary as well as light work. Approximately 1,600 separate sedentary and light unskilled occupations can be identified in eight broad occupational categories, each occupation representing numerous jobs in the national economy. These jobs can be performed after a short demonstration or within 30 days, and do not require special skills or experience.

(b) The functional capacity to perform a wide or full range of light work represents substantial work capability compatible with making a work adjustment to substantial numbers of unskilled jobs and, thus, generally provides sufficient occupational mobility even for severely impaired individuals who are not of advanced age and have sufficient educational competences for unskilled work.

(c) However, for individuals of advanced age who can no longer perform vocationally relevant past work and who have a history of unskilled work experience, or who have only skills that are not readily transferable to a significant range of semi-skilled or skilled work that is within the individual's functional capacity, or who have no work experience, the limitations in vocational adaptability represented by functional restriction to light work warrant a finding of disabled. Ordinarily, even a high school education or more which was completed in the remote past will have little positive impact on effecting a vocational adjustment unless relevant work experience reflects use of such education.

(d) Where the same factors in paragraph (c) of this section regarding education and work experience are present, but where age, though not advanced, is a factor which significantly limits vocational adaptability (*i.e.*, closely approaching advanced age, 50-54) and an individual's vocational scope is further significantly limited by illiteracy or inability to communicate in English, a finding of disabled is warranted.

Claimant at fifty-four is considered *approaching advanced age*; a category of individuals age 50-54. Under Appendix 2 to Subpart P: Table No. 1—Residual Functional Capacity: Maximum Sustained Work Capability Limited to Light Work as a Result of Severe Medically Determinable Impairment(s), Rule 202.10, for approaching advanced age, age 50-54; education: limited or less—at least literate and able to communicate in English; previous work experience, unskilled or none; the Claimant is “not disabled” per Rule 202.10.

It is the finding of the undersigned, based upon the medical data and hearing record that Claimant is “not 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 insufficient evidence to support a finding that Claimant’s physical and mental impairments meet the disability requirements under SSI disability standards and prevent other work activities for ninety days. This Administrative Law Judge finds the Claimant is “not 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 “not disabled” for purposes of the Medical Assistance program and the State Disability Program.

It is ORDERED; the Department’s determination in this matter is AFFIRMED.

/s/

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

Date Signed: February 6, 2009

Date Mailed: February 11, 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

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