

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: 2007-12569

Issue No: 2009, 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

December 10, 2007

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted by Administrative Law Judge [REDACTED] on July 12, 2007 pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department. Judge [REDACTED] left State employment before the hearing decision was written. The undersigned Administrative Law Judge has written this hearing decision after review of evidence in the record including the recording of the actual hearing. At the hearing, the Claimant was present and testified. Also present on behalf of Claimant was [REDACTED]. [REDACTED] appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA") program.

FINDINGS OF FACT

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

1. Claimant filed for MA & SDA on February 27, 2006. Claimant requested MA and SDA retroactive to January 2006.
2. Claimant also applied for MA & SDA on August 30, 2006, retroactive to May 2006.
3. Claimant's impairments are hepatitis, pancreatic, Crohn's disease, and hypertension.
4. Claimant's physical symptoms are fatigue, sharp and stabbing stomach pain, nausea and vomiting.
5. Claimant is 6'0" tall and weighs 170 pounds.
6. Claimant testified to the following physical limitations:
 - Sitting – 2 hours
 - Standing – ½ hour
 - Lifting – up to 50 lbs.
7. Claimant has been prescribed steroids, but he has not been able to afford to have the prescriptions filled.
8. Claimant underwent partial colectomy and gallbladder removal in [REDACTED]
[REDACTED]
9. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
10. Claimant is 35 years of age.
11. Claimant has a high school education and a Dental Technician certificate.
12. Claimant last worked in 2004.
13. Claimant has the following employment experience:

- Building maintenance technician (lifting up to 100 lbs. and a lot of standing/walking)
- Helicopter engine mechanic
- Dental technician fabricating dentures (requires a lot of standing/walking and lifting up to 75 lbs.)
- Home care provider.

14. Claimant testified that he performs household activities such as cooking, shopping, cleaning the home, washing dishes and vacuuming the floors.
15. The Department found that Claimant was not disabled and denied Claimant's application on 11/15/06.
16. Medical records examined are as follows:

[REDACTED]

(Exhibit E)

Admitted with acute pancreatitis, EToh abuse, Crohn's disease
Patient was awaiting surgical consult when he removed his IV and
left the hospital or discharge

[REDACTED]

Admitted following epigastric abdominal after drinking alcohol on

[REDACTED]

[REDACTED]

(Exhibit C)

Admitted for abdominal pain. Past history of pancreatitis, Crohn's
disease and small bowel obstruction status post small bowel
resection two years ago.

Last alcohol use was about five days ago.

NG tube placed.

CT Scan of Abdomen and Pelvis performed.

[REDACTED]

(Exhibit B)

Admitted with acute pancreatitis, ETOH abuse, Crohn's disease

[REDACTED]
(Exhibit B)

Admitted with pancreatitis, and Crohn's disease

He used to drink but has been sober for six months.

[REDACTED] (Exhibit
A, pp. 8-14)

Admitted with history of Crohn's disease, alcoholic hepatitis,
pancreatitis, and bowel obstruction

CT Scan on Abdomen and Pelvis performed.

[REDACTED] (Exhibit
A, pp. 15-23)

Admitted with acute pancreatitis, ETOH abuse, Crohn's disease
He consumes alcohol nearly daily.

17. The State Hearing Review Team Decision of 5/9/08 was also reviewed and is restated, in part, as follows:

NEWLY SUBMITTED EVIDENCE: He was seen in ER in [REDACTED] due to alcoholism and abdominal pain due to pancreatitis. He did not have any liver enlargement or ascites (Ex. A). In [REDACTED] he is in the ER with abdominal pain. EGD testing was normal. A CT was negative. He had right upper quadrant tenderness with no liver enlargement (Ex. B). He was in the ER again in [REDACTED] due to the same reason. No liver enlargement or ascites was seen (Ex. C). In [REDACTED] was back in the ER with abdominal pain. A CT of the abdomen was normal. His physical exam was unremarkable (Exs. D and E).

RECOMMENDATION: denied for lack of severity. P.L. 104-121 is cited due to the materiality of drug and alcohol abuse.

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.

1. Current Substantial Gainful Activity

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). In this case, under the first step, client has not worked since 2004. Therefore, the Claimant is not disqualified from receipt of disability benefits under Step 1.

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 in medical merit. The court in *Salmi v Sec’y of Health and Human Servs*, 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, the Claimant has presented medical evidence of Pancreatitis and Crohn’s Disease. The medical evidence has established that Claimant has a physical impairment that has more than a minimal effect on basic work activities; and Claimant’s impairments have lasted continuously for more than twelve months.

However, the medical records also establish a long history of alcohol abuse. 20 CFR 416.935 requires a determination of whether drug addiction or alcoholism is a contributing factor

material to the determination of disability through the factors of 20 CFR 416.935(a) through (2)

(ii). The evaluation used is as follows:

- (1) Determine which physical and mental limitations would remain if Claimant stopped using drugs or alcohol.
- (2) If remaining limitations would not be disabling, drug addiction or alcoholism is a contributing factor material to a determination of disability.
- (3) If remaining limitations are disabling independent of drug addiction or alcoholism, substance abuse is not a contributing factor material to a determination of disability.

Claimant has a long history of alcohol abuse. Alcoholism is one of the known causes for pancreatitis and can aggravate the conditions. Alcohol consumption can also increase abdominal pain for Crohn's disease patients. When Claimant was sober for six months per hospital records, Claimant still required two hospital admissions for pancreatitis and Crohn's disease. Furthermore, even though the alcohol could have caused and does aggravate the pancreatitis, if Claimant stopped drinking, the damage to the pancreas and the Crohn's disease still exist. This Administrative Law Judge finds that the alcohol addiction is not a contributing factor material to a determination of disability. Therefore, it is necessary to continue to evaluate the Claimant's impairments under step three.

3. Listed Impairment

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 physical and mental impairment are "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 Listing 5.06 *Inflammatory bowel disease (IBD)* was reviewed. In this matter, the medical records establish a diagnosis of pancreatitis and Crohn's disease. Claimant had a bowel obstruction and partial colectomy in [REDACTED], but no other medical evidence of bowel obstruction. Claimant has also had several hospital admissions for pancreatitis, but his diagnostic tests showed only adhesions not obstructions. Furthermore, Claimant's abdominal pain and cramping was controlled by narcotic medication before discharge. Therefore, 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 physical impairment does not meet the intent or severity of the listings.

4. Ability to Perform Past Relevant Work

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/her 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.

“RFC is the individual's maximum remaining ability to do sustained work activities in ordinary work setting on a regular and continuing basis, and the RFC assessment must include a discussion of the individual's abilities on that basis. A “regular and continuing basis” means 8 hours a day, for 5 days a week, or an equivalent work schedule.”

This Administrative Law Judge does take into account claimant's complaints of pain in that the diagnoses do support the claims. Subjective complaints of pain where there are objectively established medical conditions that can reasonably be expected to produce the pain

must be taken into account in determining a claimant's limitations. *Duncan v Secretary of HHS*, 801 F2d 847, 853 (CA6, 1986); 20 CFR 404.1529, 416.929

Claimant's previous employment was classified as semiskilled, medium and heavy work. Claimant testified that he is able to sit for 2 hours, stand for ½ hour and lift up to 50 lbs. While Claimant is able to lift enough for light or medium work, both require significant standing or walking. Since Claimant testified that he is currently only capable of standing for ½ hour at a time, the undersigned finds that he would only be capable of sedentary work, 20 CFR 416.967, if he were able to work on a regular and continuing basis.

The undersigned finds that Claimant would not be able to work on a regular and continuing basis and is, therefore, not capable of working in any capacity. The hospital records reveal that Claimant spent 26 days admitted to the hospital from [REDACTED]. Each of the hospital stays was preceded by a period of days where Claimant was at home unable to function due to pain. As a result of his impairments, Claimant would miss work several days per month which would be a disruption and cannot be considered working on a continuing basis.

Claimant's impairments and limitations have a major effect upon claimant's ability to perform basic work activities. Claimant is unable to perform the full range of activities for even sedentary work as defined in 20 CFR 416.967(a) because of the nature of the limitations. The total impact caused by the combination of medical problems suffered by the claimant must be considered. The combination of claimant's impairments result in a severe impairment which limits claimant's ability to work. 20 CFR 404.1529. Since Claimant is unable to work in any capacity he is unable to work.

This Administrative Law Judge finds that claimant's impairments render claimant unable to do even sedentary work. Claimant is therefore disabled for the purposes of the programs. 20 CFR 404, Subpart P, Appendix 2, Rule 201.00(h). It is not necessary to evaluate step 5.

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 evidence to support a finding that Claimant's impairment has disabled him under SSI disability standards. This Administrative Law Judge finds the Claimant is "disabled" for purposes of the MA 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 that the Department's determination in this matter is REVERSED.

Accordingly, The Department is ORDERED to initiate a review of the here after combined February 27, 2006 and August 30, 2006 applications 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 March 2010.

