

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: 2007-14164

Issue No: 2009, 4031

Case No:

Load No:

Hearing Date:

February 25, 2008

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted by Administrative Law Judge [REDACTED] on February 28, 2008 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. [REDACTED] was present and represented Claimant. [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 September 28, 2006. Claimant requested MA and SDA retroactive to June 2006.
2. Claimant's impairments are diabetes, high blood pressure, diabetic retinopathy, peripheral neuropathy, amputation of toe on right foot, and amputation of great right toe on left foot.
3. Claimant's physical symptoms are pain and numbness in feet, dizziness, headaches twice a week, numbness and throbbing in hands, and balance problems.
4. Claimant's mental symptoms are crying spells, anxiety attacks, confusion, memory problems, sleep disturbances, fear, and some paranoia.
5. Claimant testified that he uses a cane for balance.
6. Claimant is 6'0" tall and weighs 256 pounds.
7. Claimant testified to the following physical limitations:
 - Sitting – 2 hours
 - Standing – 1 hour
 - Lifting – 10 lbs.
 - walking – 1 block
 - Lifting – less than 8 hours
 - Claimant can grip but he cannot hold onto items
8. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
9. Claimant is 53 years of age.
10. Claimant completed 12th grade in high school.
11. Claimant was last employed in May of 2007.
12. Claimant has the following employment experience: landscaping (lifting 35 lbs, bending, standing and walking all day), driving a tow truck, mail handler (lifting 50-60 lbs, standing and walking all day) and manufacturing.
13. Claimant testified that he performs household activities such as cooking.

14. The Department found that Claimant was not disabled and denied Claimant's application on 10/12/06.

15. Medical records examined are as follows:

[REDACTED] in part (Exhibit A, pp. 33-34)

PHYSICAL LIMITATIONS:

Lifting – less than 20 lbs.
Stand/walk 2+ hrs in a 8 hour work day
No foot controls

[REDACTED] in part (Exhibit B)

Amputation left great toe due to diabetic peripheral neuropathy
Follow up office visits

[REDACTED], in part, (Exhibit C)

Amputation left great toe due to diabetic peripheral neuropathy

[REDACTED], in part (Exhibit D)

Treatment of Diabetes, Hypertension, Peripheral Vascular Disease and recent amputation of left great toe.

[REDACTED], in part (Exhibit 1, pp. 8-40)

ER visit for small laceration at bottom of foot.

[REDACTED], in part (Exhibit A, pp. 1)

Debridement of ulcer at the hallux and 2nd toe right foot

[REDACTED] in part (Exhibit A, pp. 2-8)

Moderate diabetic changes
Hypertensive retinopathy

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, the Claimant last worked in May of 2007. 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 from medical providers showing impairments of diabetes, high blood pressure, retinopathy, peripheral neuropathy, and toe amputations. Claimant also presented evidence of physical limitations. Claimant has

received treatment four times in the two years before the hearing for problems associated with infections of the foot due to Claimant's peripheral neuropathy.

The medical evidence has established that Claimant has physical and mental impairments that have more than a minimal effect on basic work activities; and Claimant's impairments have lasted continuously for more than twelve months. 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 discusses the analysis and criteria necessary to a finding of a listed impairment. The Listings 1.05 *Amputation* was reviewed. 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 evidence reviewed does not show that the physical impairments meet the intent or severity of the listings. Sequential evaluation under step four or five is necessary. 20 CFR 416.905.

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.

Claimant has been placed on physical limitations by his foot surgeon. Taking into consideration, [REDACTED] medical examination and Claimant's testimony, including that he uses a cane for stabilization when ambulating, this Administrative Law Judge has determined that Claimant is able to lift up to 20 lbs. occasionally and is limited to walking/standing less than 2 hours/day. Due to limits on his walking and standing, Claimant is limited to work that is sedentary in exertional level.

Claimant's prior employment, based on his testimony of his job duties, would have been considered unskilled and medium in exertional level as they required a significant portion of the day standing and lifting up to 50 lbs. Based on this information the undersigned finds the Claimant unable to return to past relevant work in any of the above mentioned prior occupations. Evaluation under step five will be made according to the law.

5. Ability to Perform Other Work

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 function capacity," defined simply as "what you can 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 impairments.

20 CFR 416.960. *Felton v. DSS*, 161 Mich. App. 690, 696-697, 411 N.W.2d 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 at the level of sedentary as sedentary work requires significant walking and standing. 20 CFR 416.967.

Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines 20 CFR

416.967(a) describes sedentary work:

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-three years is considered an *individual approaching advanced age*; a category of individuals in age group (50-54) who may be significantly limited in vocational adaptability if restricted to sedentary work. Considering Claimant's medical limitations, this Administrative Law Judge finds that claimant's impairments render claimant only able to do sedentary work. Given Claimant's age, education, and prior work experience of unskilled work, Claimant is disabled for the purposes of the programs. 20 CFR 404, Subpart P, Appendix 2, Table 1, Rule 201.12.

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 upon the above findings of fact and conclusions of law, decides that the claimant is medically disabled under the MA program as of September 28, 2006.

Therefore the department is ORDERED to initiate a review of the application of September 28, 2006, if not done previously, to determine claimant's non-medical eligibility. The department shall inform the claimant of the determination in writing. The case shall be reviewed March 13, 2010.

/s/
Jeanne M. VanderHeide
Administrative Law Judge
for Jacqueline Hall-Keith

Date Signed: 03/27/09

Date Mailed: 03/31/09


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.

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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.

JV/dm

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