

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: 2007-14344
Issue No: 2009, 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 13, 2007
Wayne County

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted by Administrative Law Judge Jacqueline Hall-Keith on September 13, 2007 pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department. Judge Jacqueline Hall-Keith 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. Marguesha Brooks, ES and Territa Rivers, FIM appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA") and State Disability Assistance ("SDA") programs.

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 December 29, 2006. Claimant requested MA and SDA retroactive to September 2006.
2. Claimant's impairments are depression, epilepsy, hernia, and colon problems.
3. Claimant's physical symptoms are seizures, pain at hernia site and bleeding with bowel movements.
4. Claimant's mental symptoms are poor short term memory, panic attacks, fear, anger, anxiety attacks, confusion, sleep disturbances and guilty feelings.
5. Claimant is 5'9" tall and weighs 176 pounds.
6. Claimant testified to the following physical limitations:
 - Lifting – 10 lbs.
 - Sitting – 1 hours
 - Standing – ½ hour
 - walking – 3-4 blocks
7. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
8. Claimant is 55 years of age.
9. Claimant completed 12th grade in high school.
10. Claimant was last employed in 2004 doing industrial laundry which required lifting 50 lbs. and standing all day. Claimant has prior work experience as a security guard (significant walking and lifting up to 25 lbs.), and as a janitor (lifting up to 30 lbs and walking).
11. Claimant testified that he performs no household activities.
12. The Department found that Claimant was not disabled and denied Claimant's application on 4/17/07.
13. Medical records examined are as follows:

██████████ Hospital Admission (Exhibit 1, pp, 8-11)

Patient is seen for neurological evaluation because of recurrent seizures. According to the patient, he has a history of head injury at age 9. Since then the patient has developed seizures, averaging 4 times per year.

CT of the brain is negative for acute process. Because of uncontrolled seizure with therapeutic level of Dilantin and possible side effect from Dilantin, Kepra recommended.

PAST HISTORY: Right inguinal hernia repair performed at hospital on 8/21/06

ASSESSMENT AND PLAN: 1. Breakthrough seizure. Neurology has been consulted. The patient is on seizure precautions and he is having neurologic checks every 4 hours. He is resumed on his home dose of Dilantin. He has been compliant with his Dilantin and his level was therapeutic upon admission. 2. History of closed head injury at age 9. Will continue Dilantin for now. 3. Recent right inguinal hernia repair, which is healing well. 4. Deep venous thrombosis prophylaxis.

██████████ Hospital Admission (Exhibit 1, p. 6)

Patient was recently put on Neurontin for breakthrough seizures. He is unable to afford Neurontin. The patient has had seizures since 1963 when he had a closed head injury after falling down some stairs. His seizures are complex partial and then secondarily generalized. He currently has a therapeutic Dilantin level after being load her in ER. This patient has been advised not to drive for six months.

14. Claimant testified that he was in the hospital in December, March, April and August of 2007 for seizures.
15. Claimant testified that he is treating at ██████████ for depression. Claimant is taking prescription medication to treat his depression.

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). 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 regulations, it is presumed that she has the demonstrated ability to engage in SGA. 20 CFR 416.974 and 416.975. If an individual engages in SGA, she is not disabled regardless of how severe her physical and mental impairments are and regardless of

her age, education and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step. In this case, under the first step, the Claimant last worked in 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 from hospital admissions showing a long history of seizures and closed head injury. Furthermore, Claimant testified to physical limitations in terms of sitting, standing, walking and lifting due to his hernia surgery. 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 Listing 11.02 *Epilepsy* 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 a long history of seizure disorder and pain at a surgical hernia site. Claimant testified to limitations resulting from the hernia repair of sitting for 1 hr, standing for ½ hour and lifting 10 lbs. In addition, Claimant has seizures that are uncontrolled. Claimant has prior history of working in industrial laundry, as a security guard and as a janitor. All of these positions are considered unskilled and medium exertional level. Given Claimant's exertional restrictions, Claimant would be limited to sedentary type work. Based on this information, the undersigned finds the Claimant unable to return to past relevant work in any of the above listing 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 or below the limits of sedentary as sedentary work 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-five years old is considered an individual of *advanced age*; a category of individuals age 55 and over. Considering Claimant's medical limitations, this Administrative Law Judge finds that claimant's impairments render him capable of doing only sedentary work. Given Claimant's age, education, and prior work experience of unskilled work, Claimant is disabled for the purposes of the programs per rule 201.04. 20 CFR 404, Subpart P, Appendix 2, Table 1, Rule 201.4. There is no need to consider Claimant's mental capacity as he is disabled as a matter of law per the sedentary work table.

Due to gaps in Claimant's medical records and a lack of recent medical records, this Administrative Law Judge orders this file to be reviewed in six months.

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 December 29, 2006 including retroactive benefits to September of 2006.

Therefore the department is ORDERED to initiate a review of the application of December 29, 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 November 1, 2009.

/s/

Jeanne M. VanderHeide
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 06/05/09

Date Mailed: 06/05/09

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.

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/dj

cc:

