

STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

████████████████████

Claimant

Reg. No.: 2007-16698

Issue No.: 2009

Case No.: ██████████

Load No.: ██████████

Hearing Date:

March 10, 2008

Wayne 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, his wife ██████ and representative ██████ appeared at a hearing held on March 10, 2008 at the Department of Human Service (Department) in Wayne County.

The closing date was waived. Additional medical records were reviewed by the State Hearing Review Team (SHRT) and they 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) program and retroactive MA-P for the month of December 2006 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 January 16, 2007 the Claimant applied for MA-P.
- (2) On February 5, 2007 the Department denied the application; and on March 6, 2009 SHRT denied the application finding the medical records did not establish a severe impairment per 20 CFR 416.9209(c).
- (3) On April 20, 2007 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-eight years of age.
- (5) Claimant completed grade 12 and two years of vocational training in architectural drafting; and can read and write English and perform basic math.
- (6) Claimant last worked in 2001 at drafting for 25 years and was laid-off.
- (7) Claimant has alleged a medical history of hypertension with nose bleeding and kidney damage, diabetes, blurred vision, with laser surgery, right jaw pain, Bell's palsy right eye and lower extremity/back pain.
- (8) [REDACTED] in part:

DISCHARGE DIAGNOSES: Type II with hyperosmolarity, uncontrolled, acute renal failure, essential hypertension, Bell's Palsy, hyperlipidemia.

HOSPITALIZATION: Three day admitted for worsening Bell's Palsy and mental status changes and headaches. Non-compliant with medications. Initial blood sugar 719. Given IVs. Chest X-ray showed cardiomegally but not CHF and CT brain was normal. Mental status improved with insulin. Acute renal failure responded well testing back to base line. Given diabetic teaching and discharged with medications prescribed home to follow at [REDACTED]. Department Exhibit (DE) 1, pp. 9-50.

(9) [REDACTED], in part:

[REDACTED]: MRI for Bell's palsy with right sided twitching: signal intensities suggestive of acute lesion in the process of normalizations. Brain volume is normal for age. Ventricles are normal and sinuses are clear. Some hyperintensity are nonspecific but can be seen with setting of demyelination and chronic ischemic changes are possibility. [REDACTED]. Claimant Exhibit pp. 1-2

[REDACTED]: CT thorax: IMPRESSION: no evidence of sarcoidosis. Non-enlarged lymph nodes. Lungs, pulmonary, aortic, abdomen, liver, spleen, kidneys, gallbladder, pancreas and adrenal glands without gross abnormalities. [REDACTED]. Claimant Exhibit p.3

[REDACTED] CURRENT DIAGNOSIS: Old right Bell's palsy with residual weakness. Right hemi facial spasms.  
NORMAL EXAMINATION AREAS: General; HEENT; Respiratory; Cardiovascular, Abdominal, Musculoskeletal, Mental.  
ABNORMAL: Neuro: right lower neuron type of facial nerve palsy.

CLINICAL IMPRESSION: Stable.

PHYSICAL LIMITATIONS: No physical limitations. No MENTAL LIMITATIONS. [REDACTED].  
Claimant Exhibit pp. 4-7.

(10) [REDACTED], in part:

[REDACTED] Seen for Bell's Palsy. Has been evaluated multiple times with recommendations of treatment options for which he does not want to take. Admits to being noncompliant with taking medications.

PHYSICAL EXAMINATION: No acute distress and alert and orientated times 3. Cardiovascular, Motor, Muscle strength, Sensory, Reflexes, Coordination, Gait and Station: [All within normal limits.] Cranial exam: Attention and concentration are poor. Speech fluent, Fund of knowledge normal. Right eyelid ptosis. Advised follow up at clinic within two days for blood pressure check and advised on necessity to take medication. [REDACTED]

██████████: Eye exam: Vision measurements: right eye 20/30 and left eye 20/20 without correction. ██████████. Claimant Exhibit pp. 20-24.

██████████: Eye Exam: Since onset of Bell palsy improved right eye. History of retinal tear left eye. Right eyelid ptosis. Visual acuity uncorrected: Right 20/30-2+3; left 20/20-1+2. Three plans: First is doing nothing. Second: Botox. Third: surgical repair of ptosis. ██████████. Claimant Exhibit pp.24-25.

██████████: Left Bell's Palsy. Condition: Stable. No physical limitations prescribed. No mental limitations. ██████████. Claimant Exhibit pp. 22-23

### 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 and being laid off when company moved to Texas. Thus, the 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 (6<sup>th</sup> 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 (6<sup>th</sup> Cir. 1988); *Farris v Sec'y of Health & Human Servs*, 773 F2d 85, 90 (6thCir 1985).

In this case, the Claimant has presented medical evidence that support physical impairments. See finding of facts 8-10. The medical evidence has established that Claimant has a physical impairment that has more than a minimal effect on basic work activities; and expected to last. See finding of facts 8-10. It is necessary to continue to evaluate the Claimant's impairments under step three.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's physical and mental impairments are 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 physical impairments 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.

The medical records established several medical evaluations; and several medical opinions were that the claimant did not have a physical or mental impairment except right eye lid ptosis. Appendix I, Listing of Impairments (Listing) discusses the analysis and criteria necessary to a finding of a listed impairment. In this matter, under Appendix 1 of Subpart P of 20 CFR, Part 404, Listing 2.02 *Loss of Visual Acuity*. The Claimant does not meet this listing because his right eye vision was 20/30 uncorrected; and left eye vision was 20/20 uncorrected; and these values are near normal.

Therefore, the undersigned finds the Claimant's medical records do not establish the criteria, severity and intent of the listings under Appendix 1 of Subpart P of 20 CFR, Part 404.

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. 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 Claimant 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. See 20 CFR 416.945.

Claimant's past relevant work was architectural drafting at a computer. The Claimant testified he would not return to past work because of his vision. Appropriate medical testing does not support any deficit of the Claimant's vision. The Claimant testified to having a driver's license but not driving due to his eyesight. But the undersigned notes, to have a driver's license issued, the Claimant had to pass a vision test. The undersigned finds the Claimant has not established he is unable to return to past work. But given his testimony, the Claimant cannot return to past relevant 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 NW2d 829 (1987).

It is the finding of the undersigned, based upon the totality of 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 medium work because there was no medical records establishing physical/mental limitations.

Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines 20 CFR 416.967(a):

203.00 *Maximum sustained work capability limited to medium work as a result of severe medically determinable impairment(s).*

(a) The functional capacity to perform medium work includes the functional capacity to perform sedentary, light, and medium work. Approximately 2,500 separate sedentary, light, and medium occupations can be identified, each occupation representing numerous jobs in the national economy which do not require skills or previous experience and which can be performed after a short demonstration or within 30 days.

(b) The functional capacity to perform medium work represents such substantial work capability at even the unskilled level that a finding of disabled is ordinarily not warranted in cases where a severely impaired individual retains the functional capacity to perform medium work. Even the adversity of advanced age (55 or over) and a work history of unskilled work may be offset by the substantial work capability represented by the functional capacity to perform medium work. However, we will find that an individual who (1) has a marginal education, (2) has work experience of 35 years or more during which he or she did only arduous unskilled physical labor, (3) is not working, and (4) is no longer able to do this kind of work because of a severe impairment(s) is disabled, even though the individual is able to do medium work. (*See* [§404.1562\(a\)](#) in this subpart and [§416.962\(a\)](#) in subpart I of part 416.)

(c) However, the absence of any relevant work experience becomes a more significant adversity for individuals of advanced



age (55 and over). Accordingly, this factor, in combination with a limited education or less, militates against making a vocational adjustment to even this substantial range of work and a finding of disabled is appropriate. Further, for individuals closely approaching retirement age (60-64) with a work history of unskilled work and with marginal education or less, a finding of disabled is appropriate.

Claimant at fifty-eight 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 medium work as a Result of Severe Medically Determinable Impairment(s), Rule 203.15, for individuals of *advanced age*, over 55; education: high school graduate or more—does not provide for direct entry into skilled work; previous work experience, skilled or semi-skilled—skills not transferable; the Claimant is “not disabled” per Rule 203.15.

It is the finding of the undersigned, based upon the medical data and hearing record that Claimant is “not disabled” at the fifth step.

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 based on disability programs.

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

/s/

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

2007-16698/JRE

Date Signed: March 12, 2009

Date Mailed: March 12, 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.

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