

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. 2007-20473
Issue No. 2009; 4031
Case No: [REDACTED]
Load No. [REDACTED]
Hearing Date:
November 14, 2007
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, a hearing was held on November 14, 2007. The Claimant and his friend [REDACTED] appeared at the Department of Human Services (Department) in Wayne County District 76.

The record was left open and the Claimant waived the closure date on the record. The Department submitted new medical records that were reviewed by the State Hearing Review Team (SHRT) who denied the application. This matter is now before the undersigned for final decision.

ISSUE

Whether the Department properly determined the Claimant is "not disabled" for purposes of Medical Assistance based on disability (MA-P) retroactive MA-P and State Disability Assistance Program (SDA)?

FINDINGS OF FACT

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

- (1) The Claimant applied for MA-P and SDA on May 18, 2007.
- (2) On June 28, 2007 the Department denied the application; and on February 5, 2008 the SHRT guided by Vocational Rule 202.21 denied eligibility finding the medical records supported an ability to return to light work activities.
- (3) On July 10, 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 presently forty-three years of age.
- (5) Claimant completed grade 11 and a GED; and Certified Nurse Training; and can read and write English and perform basic math.
- (6) Claimant last worked in [REDACTED] with work experience in tow truck driving, barbering, and nursing aide.
- (7) Claimant has a medical history of Insulin Dependent Diabetes Mellitus (IDDM) and seizure disorder then in 2001 MVA resulting in closed head injuries (CHI) and hip surgery; and now C/O hip arthritis, breathing difficulties, with neuropathy of right/left legs, knees and feet and memory loss.

- (8) [REDACTED], in part:

DIAGNOSES ON DISCHARGE: Seizure Disorder. Urinary retention. SECONDARY DIAGNOSIS: Bilateral hip pain secondary to a fall. Presented with seizure disorder and admitted with impression of uncontrolled seizure, hyperglycemia. X-ray right knee and bilateral hips: IMPRESSIONS: SUGGESTION OF LOOSE BODIES IN RIGHT KNEE JOINT. No dislocation or

fracture. Extensive post-surgical changes in pelvis related to previous internal fixation of previous fractures but no evidence of acute fracture/dislocation. Medically treated and evaluated accordingly and was asymptomatic on date of discharge as stable. Physical Examination: BP 145/90, HEENT, Heart, Lungs, Abdomen, Extremities: [All with normal limits. Medications Tylenol, Albuterol, Urecholine, Tegretol, Protonix, Flomax. Activity as tolerated. Follow up at free clinic in five days. ██████████]. Department Exhibit (DE) 1, pp. 73-74.

May: CURRENT DIAGNOSIS: Chronic pain syndrome with inability to ambulate, IDDM, severe arthritis secondary to previous MVA, asthma, bladder dysfunction. Depression secondary to chronic illness.

HT 70", WT 204, BP 132/81.

NORMAL EXAMINATION AREAS: HEENT, Respiratory; Cardiovascular, Abdominal, Neuro, Mental.

FINDINGS: General: ambulates with walker only, joint pain tenderness. Test Results: degenerative changes and herniated disc.

CLINICAL IMPRESSION: Deteriorating.

PHYSICAL LIMITATIONS: Lifting/carrying never 10 pounds; stand and/or walk less than 2 hours in 8 hour day; Needs assistive device to walk; no use of either hands/arms for simple grasping, reaching, pushing/pulling or fine manipulating; No use of either feet/legs for operating foot controls. Mental limitations: none. Can meet own needs in home. Medications: Uercholine, Tegretol, Prilosec, Flomax, Albuterol, Daproren, Elavil, Glucophage, Insulin ██████████.

DE 1, pp. 10-11

July: Reason for consultation: Diabetes: Blurry vision secondary to refractive error; hyperopia and astigmatism. Lagophthalmos both eyes. History of diabetes with non-proliferative retinopathy both eyes. Hypertension with retinopathy both eyes. Early cataracts. ██████████. Claimant Exhibit.

(9) ██████████, in part:

Independent Medical Examination: HISTORY: Walks with help of cane and occasionally uses marijuana for the pain. PHYSICAL EXAMINATION: ht 69", wt 171, BP 112/74. Uncorrected vision: right 20/40, left 20/30. Chest, Neck, Abdomen, Extremities, Heart, General and Cranial Nerves of Neurologic System, Range of Motion all joints: [All within normal limits.] Motor: muscle strength upper extremities was 5/5. Was able to get up on exam table.

Weakness right leg in lower extremities, right foot extensor is weak wears AFO, cannot walk on heels and toes and is unsteady. Uses a cane to walk due to weakness and pain. Cannot bend, stoop or carry. Cannot get up from squatting position. Antalgic, unsteady gait and needs use of cane for weakness, decrease pain and balance. [REDACTED]. De New (N) pp. 5-11.

Independent Mental Evaluation: HISTORY: Traumatic brain injury due to MVA in [REDACTED]. Says suffers short-term memory and occasional long term memory loss. Claimant noted the condition is stable. No mental health counseling or treatment. Has been in prison two times most recent from [REDACTED] through [REDACTED] charged with drug delivery.

Builds model cars and watches TV to keep mind active. Lives with girlfriend who does household chores, helps with hygiene and grooming and assists with managing financial affairs. On time, walked with assistance of crutches with good hygiene and grooming.

TESTING RESULTS: Reading at seventh grade level. Full scale IQ 74—borderline range of intellectual functioning. Test scores considered valid. No previous testing available for review. Diagnoses: Axis I: Dementia secondary to traumatic brain injury. Depressive disorder. Believed to be unable to manage benefit funds. [REDACTED]. DE N, pp. 1-4.

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 [REDACTED]. Therefore, 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 (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 (6thCir 1985).

The medical evidence has established that Claimant has physical and mental limitations, The physical/metal limitations described in the medical records are findings that have more than a minimal effect on basic work activities; and Claimant’s impairments have lasted continuously for over twelve months. See findings of facts 8-9.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant’s physical 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 her 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 Claimant’s medical records primarily establish chronic pain, ambulation difficulties, and vision damage due to IDDM and hypertension.

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 impairments do not meet the intent or severity of a listing level requirement. 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.

One of the chief complaints of the Claimant was pain. When determining disability, the federal regulations require several factors to be considered, including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his/her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitations in light of the objective medical evidence presented. 20 CFR 416.929(c)(4).

Claimant is able to physically function as set out above by [REDACTED] and [REDACTED]. See Finding of Facts 8-9. The Claimant needs an assistive walking device. The Claimant's upper extremities have full 5/5 strength but the upper extremities are needed to hold the assistive device. The claimant's lower extremities are weak and unsteady. There was evidence of falls due

to weak legs, The Claimant has vision impairments due to diabetes and hypertension, lower extremity weakness, ambulation dysfunction, and mental dysfunction said to be dementia. The Claimant's past relevant work in [REDACTED] required ambulation, use of lower extremities, and good vision for truck driving and barbering. The undersigned decides the Claimant is disabled from past relevant work and disabled from the performance of any other work because of the complexity of his impairments which are expected to last a lifetime.

It is the finding of the undersigned, based upon the medical data and hearing record that Claimant is "disabled" at step four.

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 medical evidence to support a finding that Claimant's impairments meet the disability requirements under SSI disability standards, and prevent past

relevant work or any other work at the present time for ninety days. This Administrative Law Judge finds the Claimant is “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 “disabled” for purposes of the Medical Assistance program and State Disability Assistance programs.

It is ORDERED; the department’s determination in this matter is REVERSED.

Accordingly, The Department is ORDERED to initiate a review of the May 2007 application 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 February 2010.

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

Date Signed: February 12, 2009

Date Mailed: February 17, 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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