

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: 2007-20719  
Issue No: 2009, 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
November 9, 2007  
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted by Administrative Law Judge [REDACTED] by telephone conference on November 19, 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. [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, 2007.
2. Claimant's impairments are chronic back pain, herniated disc and inflammation, and ulcers of large intestine.
3. Claimant's physical symptoms are back pain, diarrhea, and inflammation of the throat.
4. Claimant did not testify to any mental symptoms or impairments.
5. Claimant is 6'1" tall and weighs 185 pounds.
6. Claimant testified to the following physical limitations:
  - Lifting up to 15 lbs.
  - Sitting – ½ - ¾ hours
  - Standing – 15-20 minutes
  - Walking – 20-30 feet
7. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
8. Claimant is 52 years of age.
9. Claimant has an Associates degree in electronics.
10. Claimant last worked 10/2007 for a week and a half at [REDACTED] repacking transmissions and car parts lifting 15-25 lbs.
11. Claimant has prior employment experience as a mail handler, machine grinder and hi-lo driver, welder, truck painter, and toll booth operator.
12. Claimant testified that he is currently capable of doing his past job of hi-lo driver.
13. Claimant testified that he performs household activities such as cooking, grocery shopping, cleaning, laundry, sweeping, window washing, and mowing the grass.
14. Claimant testified that his hobbies include reading and watching sports and movies.

15. The Department found that Claimant was not disabled and denied Claimant's application on 3/29/07.

16. Medical records examined are as follows:

[REDACTED] in part (Exhibit, pp. 14-15)

Current Diagnoses: Herniated Disc, L5-S1, Spandylolitheses, spondylosis

Neuro Exam: Severe restricted ROM in back

Restrictions: Lifting – up to 20 lbs occasionally

[REDACTED] in part (Exhibit 1, p. 8)

IMPRESSION: A tiny right paralabral cyst involving the superior acetabulum measuring a few mm in diameter is suspected. There are moderate degenerative changes as well.

[REDACTED], (Exhibit 1, p. 9)

There is impingement on the exiting L4 nerve roots bilaterally.

IMPRESSION: Degenerative changes lower two levels herniation to the right at L5-S1. There is also bilateral spondylolysis at L5. Neural foraminal compromise is also present as detailed above.

[REDACTED], (Exhibit 1, p. 11)

Multiple views of the lumbosacral spine reveal narrowing at the L4-S1 disc space with spurring and sclerosis of the adjacent articular surfaces.

IMPRESSION: Degenerative disc disease at the L5-S1 level

#### 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 was not working at the time of the hearing. Claimant is not disqualified at the first step.

### **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 (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 F.2d 860, 862 (6<sup>th</sup> Cir. 1988); *Farris v Sec’y of Health & Human Servs*, 773 F.2d 85, 90 (6<sup>th</sup> Cir. 1985).

In this case, the Claimant has presented medical evidence of a herniated disc at L5-S1 with impingement on the exiting L4 nerve roots bilaterally. As a result, Claimant has been given physical restrictions. 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. There was no medical evidence provided regarding inflammation of the large intestine. Therefore, the undersigned finds that the Claimant did not provide sufficient evidence to meet the severity requirement of

the second step on the issue of inflammation or ulcers of the large intestine and it is not considered in the following steps.

### **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 1.04 *Disorders of the spine* was reviewed. This Administrative Law Judge finds that 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.

Claimant's previous employment is classified as unskilled, light work. [REDACTED] found that Claimant was restricted to lifting up to 20 lbs. occasionally and no restrictions on standing. Considering the medical evidence provided and Claimant's testimony, the undersigned finds that Claimant is currently able to perform work that is light in exertion. Furthermore, Claimant testified that he is physically able to perform his prior employment as a hi-lo driver. As Claimant's impairments do not prevent him from performing past relevant work, Claimant is not considered disabled under the fourth step.

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

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 insufficient evidence to support a finding that Claimant's impairment has disabled him under SSI disability standards. This Administrative Law Judge finds the Claimant is not "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, finds that the Department was correct in determining that the claimant was not disabled for the purposes of the MA / SDA program and IT IS ORDERED that the Department's decision in this matter is AFFIRMED.

/s/  
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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.

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:

