

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.: 2007-22148
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
September 27, 2007
Wayne County DHS (76)

ADMINISTRATIVE LAW JUDGE: Judith Ralston Ellison

HEARING DECISION ON ORDER OF RECONSIDERATION

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 September 27, 2007. The Claimant appeared at the Department of Human Service (Department) in Wayne County.

The record was left open to obtain additional medical information. The medical information was submitted to the State Hearing Review Team (SHRT) and the application was denied. This 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 (MA-P) program and State Disability Assistance (SDA) program?

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 filed an application for MA-P re-determination and SDA benefits on April 19, 2007.
- (2) On May 30, 2007 the Department denied the application based on a finding of improvement; and on November 13, 2007 the SHRT denied the application because medical records evidenced a capacity to perform a wide range of unskilled medium work.
- (3) On June 5, 2007 the Claimant filed a hearing request to protest the Department's determination.
- (4) Claimant's date of birth is [REDACTED], and the Claimant is thirty-five years of age.
- (5) Claimant completed grade 11 and a GED; and one year of college; and can read and write English and perform basic math.
- (6) Claimant last worked in July 2005 as a helper/runner for a law firm; previously worked as bus driver, garbage pick up, factory work, and at the post office but currently earns wages as a child care provider for two nieces since December 2006; earning \$457 in January 2007; \$482 in February 2007; \$496 in March 2007; \$588 in April 2007 and in May 2007. Department Exhibit 1, pp. 11-12.
- (7) The Claimant has a medical history of HIV-AIDS, enlarged liver, stomach enlargement, neuropathy all four extremities, swelling of feet/legs, urinary track infections/frequency, sleep apnea with breathing machine, hypothyroidism, breathing difficulties using an inhaler, and mental health treatment with two medications.
- (8) Medical examination report February 2007 by [REDACTED], MD, Infections Disease, in part:

CURRENT DIAGNOSIS: Positive for HIV; COPD, Candidiasis.
Height 5'5", Weight 214, Blood pressure 143/90.

NORMAL EXAMINATION AREAS: General; Mental.

ABNORMAL: Respiratory: rales left lung greater than right. Bilateral pneumonia [REDACTED]. Abdominal: Hepatomegaly-Epigastric tenderness.

CLINICAL IMPRESSION: Stable.

PHYSICAL LIMITATIONS: No Physical Limitations. Lifting/carrying less than 10 pounds 2/3 of 8 hour day; 10 pounds 1/3 of 8 hour day; never 20 or over; stand and/or walk less than 2 hours in 8 hour day; no assistive devices are needed; use of both hand/arms for simple grasping, reaching, pushing/pulling, fine manipulating; use of both feet/legs for operating controls. Can meet own need in home.

MENTAL LIMITATIONS: None. Department Exhibit 1, pp. 5-6.

- (9) Medical examination report March 2007 by [REDACTED], MD, Internal Medicine, in part:

CURRENT DIAGNOSIS: Bronchitis, low back pain, arthritis, asthma, neuropathy.

Weight 212, Blood pressure 120/80.

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

CLINICAL IMPRESSION: Stable.

PHYSICAL LIMITATIONS: Lifting/carrying less than 10 pounds 1/3 of 8 hour day; 10 pounds 1/3 of 8 hour day; 20 pounds 2/3 of 8 hour day, 25 pounds 1/3 of 8 hour day; never 50 pounds or over; stand and/or walk at least 2 hours in 8 hour day; no assistive devices are needed; use of both hand/arms for simple grasping, reaching, pushing/pulling, fine manipulating; use of both feet/legs for operating controls. Can meet own need in home.

MENTAL LIMITATIONS: None. Department Exhibit 1, pp. 16-17.

- (10) September 2007 by [REDACTED], MD, in part:

HISTORY: Diagnosed with AIDS [REDACTED] with symptoms of nausea, vomiting and unable to hold food down. Huge weight loss so hospitalized for two weeks. Currently getting AIDS medication, which he takes regularly. But has developed other problems due to medications. Hypertension, high cholesterol and obesity. Developed obstructive sleep apnea using a CPAP. Aches and pains in arms and legs with burning and tingling sensations. Taking Neurotin which partially helps. Has asthma and taking Albuterol and Advair inhalers. Using medication for sleep problems; and going to counseling and group therapy for past six months.

PHYSICAL EXAMINATION: Vital signs: 5'7", weight 225 pounds, BP 100/60, Vision without glasses 20/20 on right and left. HEENT, Chest, Heart, Skin, Extremities/Musculoskeletal, Neurological: [Within normal limits.] except Abdomen is obese and difficult to detect any masses. Exhibit N, pp. 1-6.

(11) November 2007, in part:

Previous grant of benefits for disability was in 2006. Disability was alleged was due to HIV, pneumonia and hypertension. According to a [REDACTED] consultative exam, the claimant was 5'7" and weighed 226 pounds. Blood pressure was normal, lungs were clear and liver was not enlarged. The claimant had full range of motion of all joints with normal gait and no neurological deficits. The claimant was asymptomatic for active HIV infection. SHRT.

CONCLUSIONS OF LAW ON ORDER OF RECONSIDERATION

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

If you are entitled to disability benefits as a disabled person age 18 or over (adult) there are a number of factors we consider in deciding whether your disability continues. We must determine if there has been any medical improvement in your impairment(s) and, if so, whether this medical improvement is related to your ability to work. If your impairment(s) has not so medically improved, we must consider whether one or more of the exceptions to medical improvement apply. If medical improvement related to your ability to work has not occurred and no exception applies, your benefits will continue. Even where medical improvement related to your ability to work has occurred or an exception applies, in most cases, (see paragraph (b)(4) of this section for exceptions) we must also show that you are currently able to engage in substantial gainful activity before we can find that you are no longer disabled.

- (i) *Medical improvement.* Medical improvement is any decrease in the medical severity of your impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled. A determination that there has been a decrease in medical severity must be based on changes (improvement) in the symptoms, signs and/or laboratory findings associated with your impairment(s) (see §416.928).

In 2006 the claimant was granted disability benefits for was HIV related symptoms. The Claimant had significant weight loss, lung based infections and generalized weakness; and a CD4 of 84.

By September 2007, the Claimant was being treated with HIV related medications. ■■■

■■■ notes that the Claimant was obese but had developed medical problems due to HIV

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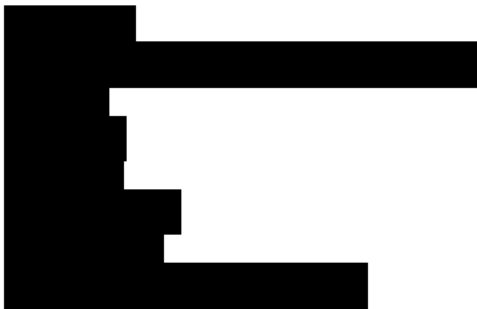
Date Mailed: 05/15/09

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 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/jlg

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