

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. 2007-23412

Issue No. 2009; 4031

Case No:

Load No. [REDACTED]

Hearing Date:

December 6, 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 December 6, 2007. The Claimant appeared at the Department of Human Services (Department) in Wayne County.

The record was left open to obtain additional medical information. An Interim Order was issued to the Department to obtain recent medical records. No additional medical records were received since December 6, 2007 to the present, February 9, 2009 from the Department. The record closed. 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 and SDA benefits on May 4, 2007.
- (2) On June 13, 2007 the Department denied the application; and on November 6, 2007 the SHRT guided by Vocational Rule 202.13 denied the application finding medical records supported the ability to perform a wide range of light work.
- (3) On June 21, 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-one years of age.
- (5) Claimant completed grade 12 and two years at community college and had training as a truck driver; and can read and write English and perform basic math.
- (6) Claimant last worked in [REDACTED] as a truck driver for 16 years; and was fired the date of the accident.
- (7) Claimant has a medical history of [REDACTED] MVA leaving left neck and shoulder pain, low back pain, painful and stiff hands, arthritis with pain right/left knees.

(8) [REDACTED], in part:

CURRENT DIAGNOSIS: Cervical strain, lumbar strain, obesity.
NORMAL EXAMINATION AREAS: General: Obese, HEENT, Respiratory, Cardiovascular, Abdominal, Neuro, Mental.
ABNORMAL FINDINGS: Musculoskeletal: positive for paracervical/pain tender, decreased range of motion with positive spasm.
CLINICAL IMPRESSION: Stable.
PHYSICAL LIMITATIONS: Limited. Lifting/carrying less than 10 pounds 1/3 of 8 hour day; never 10 or over; stand and/or walk less than two hours in 8-hour day; no need for assistive devices;

use of both hands/arms for simple grasping and fine manipulating; no reaching, pushing/pulling; no use of either feet/legs for operating controls. Needs assistance with ADLs. No mental limitations. Medications IBU, Flexeril, Vicodin. [REDACTED]. Department Exhibit (DE) 1, pp. 27-28.

(9) [REDACTED], in part:

MVA in [REDACTED], followed with doctor but did not go ER. Stated x-rays were taken of back, knees, left shoulder and neck but reports were not submitted for review.

Markedly overweight and has difficulty moving about. Has not had physical therapy. Smokes one pack of cigarettes a day. Alcohol positive for drinking.

PHYSICAL EXAMINATION: Vital Signs: HT 5'4", WT 312, BO 110/70, Visual acuity with glasses 20/20 right, 20/25 left. General, HEENT, Respiratory, Cardiovascular, Gastrointestinal, Skin, Extremities, Bones & Joints, Neurologic: [All within normal limits.] Except mild tenderness to palpation lower lumbar area and shoulder joints, slow gait, wide based gait but normal, bend to 40% of distance and recover, straight leg raising while lying 0-30 but normal sitting. Has crepitus with flexion and extension of knees. Markedly obesity complicating joint pain and discomfort. [REDACTED]. De 1, pp. 14-22.

(10) [REDACTED], in part:

CURRENT DIAGNOSIS: Knee, neck, shoulder, upper back pain secondary to MVA with decreased range of motion of neck. Paresthesias upper extremities, chronic bronchitis, Obesity.

HT 5'6", WT 323, BP 132/86.

NORMAL EXAMINATION AREAS: General: Obese, HEENT, Cardiovascular, Abdominal, Neuro, Mental.

ABNORMAL FINDINGS: Respiratory: scattered wheezes. Musculoskeletal: decreased range of motion neck-all directions less than 90 degrees.

CLINICAL IMPRESSION: Stable.

PHYSICAL LIMITATIONS: Limited, expected to last over 90 days. Lifting/carrying up to 10 pounds 1/3 of 8 hour day; never 20 or over; stand and/or walk less than two hours in 8-hour day; sit about 6 hours in 8 hour day; no need for assistive devices; use of both hands/arms for simple grasping, pushing/pulling and fine manipulating; no reaching; no use of either feet/legs for operating

controls. Findings: decreased range of motion in arms/shoulders/legs. Can meet own needs in home. No mental limitations. Medications Vicodin, Flexeril, Motrin. [REDACTED]. DE 1, pp. 10-11.

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 that he was not engaged in SGA since December 2006. 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 (6th Cir 1985).

In this case, the Claimant has medical evidence of injuries from a MVA in [REDACTED] but the Claimant did not go to ER for treatment. Apparently the Claimant received treatment from a "[REDACTED]" but none of these records were submitted. Department Exhibit 1, page 23 indicates the Claimant saw [REDACTED]; and there was a DHS-49 submitted. [REDACTED] did not disclose x-ray results in his DHS-49.

In [REDACTED] prescribed no use of lower extremities. But [REDACTED] opined the claimant's walking was slow but otherwise normal; and the doctor opined that marked obesity caused many of his pain and joint problems. [REDACTED] opined chronic left shoulder pain, chronic low back pain and minimal range of motion limitations in the neck and left upper extremity. This is sufficient to find physical impairments more than minimal effecting basic work activity. But there were no appropriate medical tests confirming causation for complaints of pain.

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 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.

Appendix I, Listing of Impairments (Listing) discusses the analysis and criteria necessary to a finding of a listed impairment. The undersigned's decision was based on Listing 1.00 *Musculoskeletal System*.

The Claimant's physical impairment appears to be related to upper extremity dysfunction due to pain. At hearing the claimant testified to driving 3-4 times a week. This activity is

sufficient to demonstrate upper and lower extremity function that is not an impairment. To meet the listing level severity, the medical records must contain evidence of impairments preventing SGA because of a loss of function.

1.00B. *Loss of function.*

1. *General.* Under this section, loss of function may be due to bone or joint deformity or destruction from any cause; miscellaneous disorders of the spine with or without radiculopathy or other neurological deficits; . . .

2. *How We Define Loss of Function in These Listings*

a. *General.* Regardless of the cause(s) of a musculoskeletal impairment, functional loss for purposes of these listings is defined as the inability to ambulate effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment, or the inability to perform fine and gross movements effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment. The inability to ambulate effectively or the inability to perform fine and gross movements effectively must have lasted, or be expected to last, for at least 12 months. For the purposes of these criteria, consideration of the ability to perform these activities must be from a physical standpoint alone. . . . We will determine whether an individual can ambulate effectively or can perform fine and gross movements effectively based on the medical and other evidence in the case record, generally without developing additional evidence about the individual's ability to perform the specific activities listed as examples in 1.00B2b(2) and 1.00B2c.

b. *What We Mean by Inability To Ambulate Effectively*

(1) *Definition.* Inability to ambulate effectively means an extreme limitation of the ability to walk; *i.e.*, an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. Ineffective ambulation is defined generally as having insufficient lower extremity functioning (see 1.00J) to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities.

(2) *To ambulate effectively*, individuals must be capable of sustaining a reasonable walking pace over a sufficient distance to be able to carry out activities of daily living. They must have the ability to travel without companion assistance to and from a place of employment or school. Therefore, examples of ineffective ambulation include, but are not limited to, the inability to walk without the use of a walker, two crutches or two canes, the inability to walk a block at a reasonable pace on rough or uneven surfaces, the inability to use standard public transportation, the inability to carry out routine ambulatory activities, such as shopping and banking, and the inability to climb a few steps at a reasonable pace with the use of a single hand rail. The ability to walk independently about one's home without the use of assistive devices does not, in and of itself, constitute effective ambulation.

c. What we mean by inability to perform fine and gross movements effectively. Inability to perform fine and gross movements effectively means an extreme loss of function of both upper extremities; *i.e.*, an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. To use their upper extremities effectively, individuals must be capable of sustaining such functions as reaching, pushing, pulling, grasping, and fingering to be able to carry out activities of daily living. Therefore, examples of inability to perform fine and gross movements effectively include, but are not limited to, the inability to prepare a simple meal and feed oneself, the inability to take care of personal hygiene, the inability to sort and handle papers or files, and the inability to place files in a file cabinet at or above waist level.

In this case, the Claimant's medical records and hearing testimony do not establish that the Claimant has an inability to ambulate or a loss of function of either upper or lower extremities. Marked obesity is not considered a listing level impairment

This Administrative Law Judge, based on the medical records, 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 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.

Here, the medical findings were essentially normal for all body systems except musculoskeletal complaints without substantiation by appropriate medical testing results. The Claimant worked as a truck driver until the MVA in [REDACTED]. But the Claimant told [REDACTED] of other work as a cook, in food services and being a clerk. The undersigned finds the Claimant cannot return to past work driving a truck. Analysis under step five is necessary.

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 functional capacity," defined simply as "what can you still do despite you 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 limitations.

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 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 light work. Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines 20 CFR 416.969:

202.00 *Maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s)*. (a) The functional capacity to perform a full range of light work includes the functional capacity to perform sedentary as well as light work. Approximately 1,600 separate sedentary and light unskilled occupations can be identified in eight broad occupational categories, each occupation representing numerous jobs in the national economy. These jobs can be performed after a short demonstration or within 30 days, and do not require special skills or experience.

(b) The functional capacity to perform a wide or full range of light work represents substantial work capability compatible with making a work adjustment to substantial numbers of unskilled jobs and, thus, generally provides sufficient occupational mobility even for severely impaired individuals who are not of advanced age and have sufficient educational competences for unskilled work.

(c) However, for individuals of advanced age who can no longer perform vocationally relevant past work and who have a history of unskilled work experience, or who have only skills that are not readily transferable to a significant range of semi-skilled or skilled work that is within the individual's functional capacity, or who have no work experience, the limitations in vocational adaptability represented by functional restriction to light work warrant a finding of disabled. Ordinarily, even a high school education or more which was completed in the remote past will have little positive impact on effecting a vocational adjustment unless relevant work experience reflects use of such education.

(d) Where the same factors in paragraph (c) of this section regarding education and work experience are present, but where age, though not advanced, is a factor which significantly limits vocational adaptability (*i.e.*, closely approaching advanced age, 50-54) and an individual's vocational scope is further significantly limited by illiteracy or inability to communicate in English, a finding of disabled is warranted.

Claimant at fifty-one is considered *approaching advanced age*; a category of individuals age 50-54. Under Appendix 2 to Subpart P: Table No. 1—Residual Functional Capacity: Maximum Sustained Work Capability Limited to Light Work as a Result of Severe Medically Determinable Impairment(s), Rule 202.14, for approaching advanced age, age 50-54; education:

high school graduate or more; previous work experience, skilled or semi-skilled; the Claimant is “not disabled” per Rule 202.14.

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

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 program and State Disability Assistance program.

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

/s/

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

Date Signed: February 9, 2009

Date Mailed: February 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.

JRE

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