

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.: 2007-26712
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
May 5, 2008
Wayne County DHS (82)

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 May 5, 2008. The Claimant and his representative appeared at the Department of Human Service (Department) in Wayne County.

The record was left open to obtain additional medical information. The representative submitted medical information reviewed by the State Hearing Review Team (SHRT) and the application was denied. Records indicate the claimant was granted MA-P effective January 2008. The matter of a closed period from November 2006 to December 2007 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) and retroactive MA-P for November 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) The Claimant filed an application for MA-P on February 22, 2007.
- (2) On April 25, 2007 the Department denied the application; and on March 18, 2009 the SHRT denied the application finding a non-severe impairment per 20 CFR 416,920(c).
- (3) On July 23, 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 forty-five years of age.
- (5) Claimant completed grade 11 and job core training as electrician; and can read and write English and perform basic math.
- (6) Claimant last worked in March 2004 building water pumps for cars and factory line building axles; and has performed outside maintenance at apartment complexes.
- (7) Claimant has alleged a medical history of numbness of hands/feet, insulin dependent diabetes mellitus, head injury, back pain, right knee pain and leg pain.
- (8) November and December 2006, in part:

November: DIAGNOSES: Diabetic ketoacidosis; Pneumonia, most likely community acquired; Hypertension, Diabetes. To ER with shortness of breath, cough, nausea for two days. Found to have serum glucose of 350. Medically treated. Kept in isolation when Chest X-ray showed lung lesion thought to be TB. Got better. Pulmonary thought lesion was pneumonia. Isolation discontinued and he was ready for discharge to follow with PCP in one week. Given telephone for resident's clinic for X-ray. Medications: insulin, [REDACTED]. Stable with no acute health issues. [REDACTED] Department Exhibit (DE) 1 pp. 7-26.

December: Admitted with shortness of breath, with cough, 60 pound weight loss and abnormal chest X-ray. At other hospital last month and received antibiotics. Tests revealed infection in lungs

with MRSA organism but no TB. Treated medically. Upper and lower endoscopies perform. Post operative diagnoses: gastritis, hiatal hernia, ascending colon polyp removal, diverticulosis coli. [REDACTED]. DE 1, pp. 102-117.

(9) March, June, November 2007, in part:

March: Admit for chest pain, abdominal and back pain. He did not follow up with pulmonary since November 2006. Pulmonary consult: TB is still consideration, malignancy, testing ordered as he needs a diagnosis before discharge. Discharged with no more shortness of breath, Vital Signs stable. Bronchial breath sounds on right side chest with congestion improved last CXR. CVS, Abdomen, Extremities, Neuro: [All within normal limits.] [REDACTED] [REDACTED] 1, pp. 61-94 and claimant Exhibit C, pp. 1-10

June: Admit for abdominal pain with nausea and diarrhea, vomiting two days. Medical History: diabetes, hypertension, history of alcoholic pancreatitis and asthma, several episodes of ketoacidosis, history of pneumonia with cavity lung lesion right. AFB negative. DE 1, pp. 48-50

November: Progress Note: Seen in this clinic since March 2005. Recently hospitalized for blood sugar last month and, not seen eye or dentist. Hasn't taken BP meds in 3-4 months but has been fainting. HT: 71", WT: 146, BP 102/76, BS 507. Diagnoses: Acute increased glucose—uncontrolled. Start medication for better control. Recommend aspirin, Start ACEI with low dose. LOL below target. CBC abnormalities [REDACTED]. Claimant Exhibit B, pp. 1-21

December: To ER with C/O back pain for quite awhile. No complaints of bowel/bladder incontinence. Or hematuria/dysturia. Stated had CT scan at PCP but unable to get in for results. History positive for alcohol. Medications: Insulin, [REDACTED] and inhaler. Denies smoking and drugs. Physical Examination: General, Head, Eyes, Ears, Neck, Cardiovascular, GI, Extremities, Neurologically: [All within normal limits.] Except reproducible tenderness to palpation diffusely thorough his back in midline and paraspinal musculature but strength 5/5 in all four extremities. Sensation and pulses intact.

He said has had this pain before and it should be in his record so he came but I don't see medical record notation in the past year. Given [REDACTED] and to follow up with PCP. [REDACTED]. Claimant Exhibit C, pp. 11-12

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 2004. 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 presented sufficient medical evidence to support physical limitations. 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 are expected to last.

The Claimant's medical records do not document mental impairments that effect basic work activities. See finding of fact 8-9.

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 undersigned's decision was based on Listing 7.00 *Hematological Disorders*; and 9.00 *Endocrine Disorders*. The Claimant does not meet these listings due to the lack of medical records demonstrating a non-response to medication treatment or frequent re-occurrence, in spite of medical treatment. The medical records do establish a non-compliance with prescribed treatment. See 20 CFR 416.930.

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 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 exacerbation of complications of diabetes, breathing difficulties, treatment for hypertension. There were no medical records placing limits on the Claimant's physical movements; and strength was 5/5 in all four extremities. See finding of fact 8-9.

But the undersigned finds that the seriousness of the diagnoses and medical treatment in the medical records during the time period November 2006 to November 2007; merits a grant of disability for the time period of November 2006 to November 2007. The undersigned notes the Claimant was very young (Age 44-45); and there were several medical complications which prevented past relevant work or other work during the time period November 2006 to November 2007.

It is the finding of the undersigned, based upon the medical data and hearing record that Claimant is "disabled" at the fourth step for the application filed February 22, 2007.

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 for the time period November 2006 to November 2007.

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

Accordingly, The Department is ORDERED to initiate a review of the February 2007 application to determine if all other non-medical eligibility criteria are met for time period

November 2006 to November 2007. The Department shall inform Claimant and the representative of its determination in writing.

/s/

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

Date Signed: 05/05/09

Date Mailed: 05/06/09

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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