

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: 2007-28326
Issue No: 2009, 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 13, 2008
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted by Administrative Law Judge Jacqueline Hall-Keith on February 13, 2008 pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department. Judge Jacqueline Hall-Keith left State employment before the hearing decision was written. The undersigned Administrative Law Judge has written this hearing decision after review of a evidence in the record including the recording of the actual hearing. At the hearing, the Claimant was present and testified. [REDACTED] [REDACTED] was present and represented Claimant. [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. Claimant requested MA and SDA retroactive to November 2006.
2. Claimant's impairments are coronary artery disease, peripheral arterial disease, and hypertension.
3. Claimant's physical symptoms are chest pain, hot flashes, dizziness, shortness of breath and pain in legs when he stands for periods of time.
4. Claimant testified that he has a lot of fatigue due to his medications and that he generally sleeps for approximately six hours during the day.
5. Claimant is 5'9" tall and weighs 196 pounds.
6. Claimant testified to the following physical limitations:
 - Sitting-1 & ½ hours
 - Standing-25 min.
 - walking-1 block
 - no gripping or grasping with right hand
7. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
8. Claimant is 53 years of age.
9. Claimant completed 11th grade in high school.
10. Claimant was last employed 2/19/03.
11. Claimant has the following employment experience: shipping & receiving, home health care aide, psychiatric aide, cashier, and short order cook.
12. Claimant testified that he performs household activities such as cooking.
13. The Department found that Claimant was not disabled and denied Claimant's application on 4/17/07.
14. Medical records examined are as follows:

[REDACTED] in part, (Exhibit A, pp. 1-2 & Ex. F)

HISTORY OF PRESENT ILLNESS: Patient presented with a history of coronary artery bypass graft surgery, cardiac catheterization [REDACTED] and he was found to have patent grafts and continued medical management was recommend. Patient presented to hospital complaining of a loss of consciousness.

IMPRESSIONS:

1. Syncope of unknown etiology
2. History of peripheral arterial disease
3. History of coronary artery bypass graft surgery in the past

[REDACTED], in part, (Exhibit A, p. 5, 6)

CONCLUSION:

1. Complete 2-D study with adequate images. Complete spectral and color Doppler
2. Normal left ventricular systolic function. Estimated ejection fraction is 55%
3. Normal diastolic function

[REDACTED] in part, (Exhibit A, pp. 32-36)

Patient admitted for chest pain.

[REDACTED] in part (Exhibit A, pp. 37-38)

Physical restrictions as follows:

- No exertional tasks
- Lifting up to 10 lbs occasionally
- Stand/walk 2 hrs in 8 hr workday
- No repetitive actions.

[REDACTED] in part, (Exhibit A, pp. 7-12)

The patient . . . with a past medical history significant for coronary artery disease, status post coronary artery bypass graft surgery in 2003 and multiple stent placements, history of severe peripheral vascular disease, hypertension, and hypercholesterolemia.

[REDACTED] in part, (Exhibit A, pp. 13-14)

LEFT ANTERIOR DESCENDING CORONARY ARTERY: The left anterior descending artery had an ostial 80% stenosis.

SAPHENOUS VEIN BYPASS GRAFT TO THE POSTERIOR DESCENDING ARTERY: the stent in the proximal segment had

diffuse approximately 50-60% in-stent restenosis.

CONCLUSIONS:

1. Preserved left ventricular systolic function

[REDACTED] Exhibit A, pp. 18-19)

[REDACTED] in part, (Exhibit A, pp. 22-25)

Patient admitted for chest pain following stent placement. Includes - 6/3/03 angioplasty and stent placement of the saphenous vein graft to the right coronary artery and proximal coronary artery.

[REDACTED] in part, (Exhibit A, pp. 26-29)

Coronary artery bypass surgery

[REDACTED] in part (Exhibit A, pp. 30-31)

Physical restrictions as follows:

- stand/walk less than 2 hrs in 8 hr work day
 - sit less than 6 hours in 8 hr work day
 - no repetitive actions for either hand
- Cane prescribed (Exhibit A, p. 39)

[REDACTED] in part (Exhibit A, pp. 45-53)

Angioplasty and stent placement at bilateral proximal common iliac arteries and left external iliac artery.

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, the Claimant last worked in 2003. Therefore, the Claimant is not disqualified from receipt of disability benefits under Step 1.

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

In this case, the Claimant has presented medical evidence from hospital admissions showing a long history of peripheral arterial disease and coronary artery disease. Claimant testified to physical limitations in terms of sitting, standing, walking and lifting which are supported by Claimant’s physicians.

The medical evidence has established that Claimant has physical and mental impairments that have more than a minimal effect on basic work activities; and Claimant’s impairments have lasted continuously for more than twelve months. It is necessary to continue to evaluate the Claimant’s impairments under step three.

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 discusses the analysis and criteria necessary to a finding of a listed impairment. The Listing 4.0 *Cardiovascular Impairments* was reviewed. 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 the medical evidence reviewed does not show that the physical impairments meet the intent or severity of the listings. Sequential evaluation under step four or five is necessary. 20 CFR 416.905.

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 has a long history of coronary artery disease. As a result, he has been placed on restrictions by his cardiologist of no exertional tasks, lifting up to 10 lbs. occasionally, standing/walking no more than 2 hours per 8 hour work day and no repetitive actions for either

hand. In addition, claimant has been prescribed a cane for mobilization. Claimant's prior employment classified as follows:

1. Shipping & Receiving Clerk - heavy unskilled
2. Cashier—light, unskilled
3. Short Order Cook—light, unskilled
4. Home Health Care Aide—medium, semi skilled
5. Psychiatric Aide—medium, semi-skilled

Based on this information the undersigned finds the Claimant unable to return to past relevant work in any of the above listing prior occupations. Evaluation under step five will be made according to the law.

5. Ability to Perform Other Work

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 function capacity,' defined simply as "what you can still do despite your 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 impairments.

20 CFR 416.960. *Felton v. DSS*, 161 Mich. App. 690, 696-697, 411 N.W.2d 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 below the limits of sedentary as sedentary work requires "good use of hands and fingers for repetitive hand-finger actions". 20 CFR 416.967.

Appendix 2 to Subpart P of Part 404 Medical-Vocational Guidelines 20 CFR 416.967(a) describes sedentary work:

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Claimant at fifty-three years is considered an *individual approaching advanced age*; a category of individuals in age group (50-54) who may be significantly limited in vocational adaptability if restricted to sedentary work. Considering Claimant's medical limitations, this Administrative Law Judge finds that claimant's impairments render claimant unable to do even sedentary work. Claimant is therefore disabled for the purposes of the programs. 20 CFR 404, Subpart P, Appendix 2, Rule 201.00(h).

Due to gaps in Claimant's medical records and a lack of recent medical records, this Administrative Law Judge orders this file to be reviewed in six months.

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 evidence to support a finding that Claimant's impairment has disabled him under SSI disability standards. This Administrative Law Judge finds the Claimant is '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, decides that the claimant is medically disabled under the MA program as of February 27, 2006.

Therefore the department is ORDERED to initiate a review of the application of February 27, 2006, if not done previously, to determine claimant's non-medical eligibility. The department shall inform the claimant of the determination in writing. The case shall be reviewed August 5, 2010.

/s/

Jeanne M. VanderHeide
Administrative Law Judge
for Jacqueline Hall-Keith

Date Signed: 03/11/09

Date Mailed: 03/11/09

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

2007-28326/JV

cc:

