

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. 2007-28883

Issue No. 2009

Case No:

Load No.

Hearing Date:

November 13, 2008

Oakland 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 November 13, 2008. The Claimant and his representative [REDACTED] appeared at the Department of Human Services (Department) in Oakland County.

The record was left open to submit additional medical information. The closure date was waived on the record. 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 retroactive MA-P for the months of October, November and December 2006?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) On January 26, 2007 the Claimant applied for MA-P, retroactive MA-P.
- (2) On May 14, 2007 the Department denied the application; and on December 8, 2008 the SHRT denied the application finding the medical records established the ability to return to past work.
- (3) On August 9, 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 sixty-one years of age.
- (5) Claimant completed grade 12 and four years of college; and can read and write English and perform basic math skills.
- (6) Claimant last worked in the May-July 2008; 25-hours a week, but previously was a branch manager in a mortgage company and has experience in clothing retail sales and owned a retail sales clothing store for 30 years; and acknowledged mortgage company work to be current in November 2006; for varied hours, paid on commission; and Department notes earning [REDACTED] in 2006. Department Exhibit (DE) 1, pages 25-30.
- (7) Claimant has alleged a medical history of myocardial infarction (MI) in [REDACTED] [REDACTED] with stent placement leaving afternoon fatigue, low ejection fraction with recommendation of defibrillator and walking, psoriatic arthritis of the hip, back, knees, arms for 25 years, back pain with right leg numbness, kidney problems and anxiety.

- (8) [REDACTED], in part:

CURRENT DIAGNOSIS: heart attack in [REDACTED]; and LVEF IS 25% with stent placement in LAD.

Vital signs: Height 6', Weight 182, BP 120/60.

NORMAL FINDINGS: General, HEENT, Abdominal, Musculoskeletal, Neuro, Mental.

FINDINGS: Respiratory: occasional crackles. Cardiovascular: LVEF 25%.

CLINICAL IMPRESSION: Improving.

PHYSICAL LIMITATIONS: Limited, expected to last more than 90 days. Lifting/carrying to 10 pounds 2/3 of 8 hour day; never 20 pounds or over; standing and/or walking at least 2 hours in 8 hour day; sit less than 6 hours in 8-hour day. Assistive devices are not medically required; use of both hands/arms for simple grasping, reaching, pushing/pulling, fine manipulating; use of both feet/legs for operating foot controls.

MENTAL LIMITATIONS: None. Current medications: Plavix, Aspirin, Lipitor, Lasix, Cozaar, Zaroxyln, Corey. [REDACTED], [REDACTED]. DE 1, pp. 36-37.

- (9) [REDACTED]; and approximately one year later [REDACTED], in part:

[REDACTED]: Overall cardiac status is stable without clear evidence of congestive heart failure (CHF). Shoulder pain is very atypical and most likely musculoskeletal, however, due to moderate degree of coronary disease, we had a long discussion in regards to defibrillator; and do believe would benefit with placement for primary prevention of sudden cardiac death. Will do when able, after resolution of insurance issue.

[REDACTED]: Follow-up visit. Doing well after MI with angioplasty and stenting of the left anterior descending artery. Left ventricular function has not significantly improved following angioplasty. Continues to have some exertional dyspnea and occasional episodes of atypical chest pain. Physical Examination: BP 100/66, Head/Neck, Cardiac Examination regular rate and rhythm with soft S3 gallop, no new murmurs. Lungs, Extremities: [Within normal limits.] Continue current medications except discontinue Plavix. Stress test ordered but waiting insurance before completing stress test. Follow up three months.

CURRENT DIAGNOSIS: CAD, CMP, CHF.

BP 100/66.

NORMAL FINDINGS: General, HEENT, Respiratory, Abdominal, Musculoskeletal, Neuro, Mental.

FINDINGS: Cardiovascular: positive syst. M (murmur). J S3.

CLINICAL IMPRESSION: Stable.

PHYSICAL LIMITATIONS: Limited, expected to last more than 90 days. Lifting/carrying to 25 pounds 1/3 of 8 hour day; never 50 pounds or over; standing and/or walking at least 2 hours in 8 hour day; Assistive devices are not medically required; use of both hands/arms for simple grasping, reaching, pushing/pulling, fine manipulating; use of both feet/legs for operating foot controls. Can meet own needs at home.

MENTAL LIMITATIONS: None. Current medications: Aspirin, Lipitor, Protonix, Digoxin, Coreg, Niacin, Aldactone, Zaroxynl, Lasix, Inderal. [REDACTED] Claimant Exhibit E, pp. 1-8 and B3 signed [REDACTED].

(10) [REDACTED], in part:

Stress/Rest Perfusion Scan to evaluate for coronary ischemia. Stress/Findings: Without ischemic ECG changes. No arrhythmias, symptoms or complications. Ejection Fraction 40%. Normal LV size with moderate impairment of systolic function. [REDACTED], [REDACTED]. Claimant Exhibit F, pp. 1-2.

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. 20 CFR 416.920(b). In this case, under the first step, the Claimant acknowledged past relevant work in November 2006, one month after the MI. Past relevant work was managing a mortgage office with payment on commission. The Claimant also acknowledged past relevant work performed in May to July 2008 at the hearing in November 2008. There was no additional evidence. The undersigned decides the 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 (6thCir 1985).

In this case, the Claimant has presented sufficient medical evidence to support a finding that Claimant has more than slight abnormalities that are physical limitations on his abilities to perform basic work activities. See Finding of Facts 8-9. The medical evidence has established that Claimant has physical limitations that have more than a minimal effect on basic work activities. There was no medical evidence of a mental impairment that would affect performance of basic work activities. See Finding of Facts 8-9.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant’s physical impairments are 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 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. Listing 4.04 *Ischemic heart diseases* was reviewed. In this matter, the medical records establish a diagnosis of status post MI with stent placement in [REDACTED], low ejection fraction. [REDACTED] ordered a stress test which was basically negative for coronary ischemia. The undersigned notes that the Claimant had the test performed without waiting for MA-P to pay for the procedure. By [REDACTED] the ejection fraction was 40% or within the normal range. See Finding of Fact 10.

The Claimant also alleged disability due to psoriatic arthritis. But no medical records discussed this condition as physically functionally disabling the Claimant including [REDACTED] [REDACTED]. See Finding of Facts 8-9. The undersigned notes the Claimant has had the condition for 25 years according to the testimony; and was able to perform basic work activities.

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 physical impairment does not meet the intent or severity of the listings. 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 Claimant 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. See 20 CFR 416.945.

Claimant's past relevant work included work as a manager of mortgage office. The SHRT opined the claimant can return to past relevant work; and the undersigned agrees. But arguendo, claimant is still not disabled under step five.

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 sedentary up to and including light work based on [REDACTED] physical functional evaluation as signed [REDACTED]. A medical opinion by [REDACTED] returned the Claimant to sedentary type work in [REDACTED]. There was no medically documented deterioration [or re-occurrence of MI] of the Claimant's condition between these time periods [REDACTED] to [REDACTED]. Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines 20 CFR 416.967(a):

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 sixty-one is considered *advanced age*; a category of individuals age 55 and over. Under Appendix 2 to Subpart P: Table No. 1—Residual Functional Capacity: Maximum Sustained Work Capability Limited to Sedentary Work as a Result of Severe Medically Determinable Impairment(s), Rule 201.07, for individuals of *advanced age*, over 55; education: high school graduate or more—does not provide for direct entry into skilled work; previous work experience, skilled or semi-skilled—skills transferable; the Claimant is “not disabled” per Rule 201.07.

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

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 retroactive Medical Assistance programs.

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 18, 2009

Date Mailed: February 20, 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

cc:

