

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. 2007-8433

Issue No. 2009

Case No:

[REDACTED]

Load No.

Hearing Date:

April 30, 2009

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted by Administrative Law Judge Jeanne M. VanderHeide on April 30, 2009 pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department on January 20, 2009. At the hearing, the Claimant was present and was represented by [REDACTED]. Tara Lipscomb 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 an application for MA on December 29, 2006 (reregistered on 8/22/08). Claimant requested MA and SDA retroactive to September, 2006.
2. Claimant is 5'11½" tall and weighs 200 pounds.
3. Claimant is right handed.

4. Claimant is 50 years of age.
5. Claimant's impairments have been medically diagnosed as GSW in 2006, GSW in back in 1991, and disc disease.
6. Claimant's physical symptoms are aches and needle like pains in leg and back. Claimant also experiences numbness down entire leg to foot.
7. Claimant's mental symptoms are some memory difficulties and difficulty concentrating,
8. Claimant is currently treating with [REDACTED]. The record was left open to allow Claimant to submit [REDACTED] records along with a DHS 49. No records were ever submitted.
9. Claimant is taking the following prescriptions (side effects):
 - a) Motrin
 - b) Vicodin
 - c) Hypoactive thyroid - synthroid
10. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
11. Claimant has a 9th grade education, special education from 4th grade on. Claimant has difficulty with comprehension.
12. Claimant is able to write but cannot read very well. Claimant cannot perform basic math skills with any figures over \$100.
13. Claimant last worked 2007 driving a hi-lo for three months. Physical activity involved climbing up and down the hi-lo.
14. Claimant has prior employment experience as a welder. Claimant has a certificate from [REDACTED]. He worked for thirty years at [REDACTED] on the line. Claimant left this job because of a crack cocaine addiction. Claimant was required to lift up to forty lbs. and stand all day.
15. Claimant testified to the following functional limitations:
 - Sit 20-30 minutes then back start aching, stands up
 - Stand 15-20 minutes
 - Walk – 1 block
 - bend/stoop – no b/c of back pain
 - lift – 5 lbs. Gallon of milk
 - grip/grasp
16. Claimant testified that [REDACTED] placed him on physical restrictions of no bending, lifting, prolonged standing, or stooping. However, no evidence was submitted regarding same.

17. Claimant testified that he does not perform any household chores.
18. At the hearing, Claimant used a cane prescribed by [REDACTED].
19. The Department found that Claimant was not disabled and denied Claimant's application on November 12, 2008.
20. Medical records examined are as follows, in part:

[REDACTED] Hospital Admission (Exhibit 1, pp. 9-29, 132-141)
Open reduction of fracture of femur with internal fixation following GSW to the right posterior thigh. Gunshot wound to abdomen with left nephrectomy

[REDACTED] Hospital Admission (Exhibit A, pp. 1-2)
Pt returned to clinic on [REDACTED] with right calf pain. Doppler ultrasound showed a popliteal deep vein thrombosis. Patient admitted overnight for lovenox treatment and coumadin. Pt discharged to follow up with coumadin clinic.

[REDACTED] Hospital Admission (Exhibit 1, pp. 36-60, 72-86)
Patient returned to ER with sudden significant increase in his right thigh size unable to move the right lower extremity. Right lower extremity angiogram and emobiliation of the bilobed pseudoaneurysm arising from the distal trunk of the right profunda femoral artery. Surgical drainage of Hematoma.

22. The record was left open to allow Claimant to provide additional medical records including a DHS-49 from his treating physician. According to Claimant's AR, despite several attempts, the doctor did not provide the information requested.

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). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. “Substantial work activity” is work activity that involves doing significant physical or mental activities. 20 CFR 416.972(a). “Gainful work activity” is work that is usually done for pay or profit, whether or not a profit is realized. 20 CFR 416.972(b). Generally if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that she has the demonstrated ability to engage in SGA. 20 CFR 416.974 and 416.975. If an individual engages in SGA, she is not disabled regardless of how severe her physical and mental impairments are and regardless of

her age, education and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

In this case, under the first step, the Claimant last worked in 2007. 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 medical providers showing a gun shot wound to the right posterior thigh with a femoral shaft fracture and open reduction of fracture of femur with internal fixation, deep vein thrombosis, low back pain and numbness from right leg radiating to right ankle. Claimant also testified to physical limitations in terms of sitting, standing, walking and lifting.

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 Listings 1.06 *Fracture of the femur* was reviewed and requires:

- A. Solid union not evident on appropriate medically acceptable imaging and not clinically solid; and
- B. Inability to ambulate effectively, as defined in 1.00B2b, and return to effective ambulation did not occur or is not expected to occur within 12 months of onset.

20 CFR 404, Subpart P, Appendix 1, Rule 1.06. 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 testified to physical limitations but did not provide any evidence that the limitations were doctor imposed. Claimant's prior employment, based on his testimony of his job duties as a welder, would be considered medium exertional level as it required a significant portion of the day standing and lifting up to 40 lbs. It would also be considered semi-skilled. Taking into consideration Claimant's testimony of his limitations and Claimant's presentation at the hearing, the undersigned finds the Claimant unable to return to past relevant work in the above mentioned prior occupation as a welder. 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 at the limits of sedentary work with a sit/stand option. 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 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. Individuals approaching advanced age (age 50-54) may be significantly limited in vocational adaptability if they are restricted to sedentary work. When such individuals have no past work experience or can no longer perform vocationally relevant past work and have no transferable skills, a finding of disabled ordinarily obtains. 20 CFR 404, Subpart P, Appendix 2, Rule 201.00(g).

Considering Claimant’s medical limitations, this Administrative Law Judge finds that claimant’s impairments render claimant able to do only sedentary work. Considering also

Claimant's limited education and difficulty with math on numbers over one hundred, the undersigned finds that Claimant is disabled for the purposes of the programs. 20 CFR 404, Subpart P, Appendix 2, Rule 201.00(g).

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.

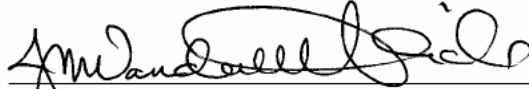
In this case, there is sufficient evidence to support a finding that Claimant's impairment has disabled him under SSI disability standards. This Administrative Law Judge finds the Claimant is "disabled" for purposes of the MA program.

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 December 29, 2006.

Therefore, the department is ORDERED to initiate a review of the application of December 29, 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 December of 2010.



Jeanne M. VanderHeide
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 01/29/10

Date Mailed: 02/02/10

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

cc:

