

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.: 2007-13030

Issue No.: 2009, 4031

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

June 6, 2007

Wayne County DHS [REDACTED]

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 June 6, 2007 at the Department of Human Service (Department) in Wayne County. The Claimant and his friend [REDACTED] appeared for the hearing.

The record was left open to obtain additional medical information. An Interim Order was issued for additional medical records and independent medical examinations. No new medical records were received. 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 based on disability (MA-P) and State Disability Assistance (SDA) 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) On October 20, 2006 the Claimant applied for MA-P and SDA.
- (2) On January 9, 2007 the Department denied the application; and on May 3, 2007 the SHRT denied the application finding the medical records did not establish a physical/mental impairment that prevented basic work activities.
- (3) On January 24, 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-four years of age.
- (5) Claimant completed grade 12 and one semester at [REDACTED]; and can read and write English and perform basic math.
- (6) Claimant last worked in 2006 supervising five people in shipping/receiving for 23 years.
- (7) Claimant has alleged a medical history of pain of right/left feet and right/left hips, bilateral foot pain, right hand numbness and loss of strength in his grip; and untreated depression.
- (8) [REDACTED] in part:

CURRENT DIAGNOSIS: Post-surgical bilateral hip arthrosis, severe bilateral bunion deformities of feet.
HT 6'2", WT 198; BP 120/80, Best corrected visual acuity right 20/25, left 20/30.
NORMAL EXAMINATION AREAS: General, HEENT, Respiratory, Abdominal, Neuro, Mental.
FINDINGS: Cardiovascular: palpitations. Musculoskeletal: severe bilateral bunion deformities of feet, antalgic gait, decreased range of motion of hips due to degenerative changes.

CLINICAL IMPRESSION: Deteriorating.

PHYSICAL LIMITATIONS: Limitations expected to last over 90 days. Stand and/or walk less than 2 hours in 8-hour day; sit less than 6 hours in 8 hour day; no assistive devices are needed; no use of either feet/legs for operating controls. Can meet own needs in home.

MENTAL LIMITATIONS: none. Medications: OTC-NSAIDS, Tylenol, ASA. [REDACTED]. Department Exhibit (DE) 1, pp.16-17.

INDEPENDENT MEDICAL EXAMINATION: Hip surgery age [REDACTED] years with episodes of hip pain. Lower back pain with denial of tingling, numbness, sensory or motor loss, denies loss of bladder/bowel problems, denies, cough, shortness of breath, hemaoptysis, hypertension, diabetes, nausea, vomiting, diarrhea or weight loss. C/O hammer toes both feet and bunions both feet and states cannot stand for long time.

PHYSICAL EXAMINATION: Vital signs: HT 6'1", WT 202, BP 130/80, Vision with glasses 20/25 right, 20/20 left. Speech is intelligible. Unlimited gait without use of walking aid. General, HEENT, Respiratory, Cardiovascular, Gastrointestinal, skin, Extremities, Bones and Joints, Neurological: [All within normal limits.] Except: Right foot has lateral deviation of great toe at 45 degree angle with hammer toe 2 and 3 toes. Left foot bunion of great toes with 45 degree deviation laterally and hammer toes at 2 and 3. No range of motion limitations notes of any joint including hips. No neurological or musculoskeletal abnormality of lower back [REDACTED]. DE 1, pp. 5-12.

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 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 (6thCir 1985).

In this case, the Claimant has presented medical evidence from one doctor of decreased range of motion of the hips and two doctors find bilateral hammer toes and bunions. This is more than minimal and impacts his abilities to perform basic work activities. It is necessary to continue to evaluate the Claimant’s impairments under step three. There were no medical records establishing mental impairments. See finding of fact 8.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant’s 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 mental/physical impairment is a “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. In this matter, [REDACTED] medical records establish some range of motion limitations of the hips and bilateral foot hammer toes and bunions. Loss of

function under Listing 1.00 *Musculoskeletal System*, Appendix 1 of Subpart P of 20 CFR, Part 404; establishes the severity and intent of this listing. But loss of function was not established in the medical records. The Claimant has unlimited ability to walk and has complete ability to use his upper extremities. See finding of fact 8.

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. 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 was shipping/receiving where he supervised five employees. But the Claimant's testimony at hearing was that he cannot return to past relevant work due to the heavy lifting. Based on this testimony, and the data in the medical records, the Claimant can not return to past relevant 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 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 work. 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 forty-four is considered a *younger individual*; a category of individuals age 18 to 49. 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 201.28, for younger individual, age 18 to 49; education: high school graduate or more; previous work per Rule 201.28.

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 medical evidence to support a finding that Claimant's impairments meet the disability requirements under SSI disability standards, and prevents other work activities for ninety days. 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.

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: March 5, 2009

Date Mailed: March 9, 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/jlg

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