

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: 2007-13546

Issue No: 2009, 4031

Case No:

Load No:

Hearing Date:

December 3, 2007

Macomb County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted by Administrative Law Judge Jacqueline Hall-Keith on December 3, 2007 pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department on March 8, 2007. 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 evidence in the record including the recording of the actual hearing. At the hearing, the Claimant was not present, nor did he present an affidavit of testimony. Claimant was represented by [REDACTED] [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 and SDA on July 31, 2006. Claimant requested MA retroactive to July 2006.
2. Claimant's impairments have been medically diagnosed as aortic dissection, hypertension, hyperlipidemia, left sided renal failure, deep vein thrombosis, and sleep apnea.
3. Claimant's physical symptoms are chest pain with recent hospitalizations, shortness of breath, and low back pain.
4. Claimant's impairment's will last or have lasted for a continuous period of not less than 12 months.
5. Claimant is 46 years of age.
6. Claimant is 5'4" and weighs 246 pounds.
7. Claimant has a 9th grade education although he also has difficulty reading and writing. Claimant describes himself as a slow learner. He dropped out of special education in the 9th grade.
8. Claimant has employment experience as a general laborer and welder for approximately twelve years. Claimant last attempted to work as a general laborer in [REDACTED] but was unable to maintain the employment as it lasted only 1-2 months.
9. Claimant has significant limitations on physical activities as follows:
 - a) Walking - one hour in an 8 hour work day
 - b) Standing - 30 minutes
 - c) Sitting - 1 hour
10. The Department found that Claimant was not disabled and denied Claimant's application on December 12, 2006.
11. Claimant's Activities of Daily Living described the following:
 - a) uses oxygen machine to sleep at night
 - b) medication makes him sleepy and weak
 - c) no yard work performed any longer
(Exhibit 1, pp. 24-27).

[REDACTED], in part (Exhibit C)

The patient, with a past medical history significant for hypertension - noncompliant with medication Type B aortic dissection, came to the hospital with ongoing chest pain and back pain which has been going on for three days. The patient states that he is uninsured and has difficulty getting access to his medications. Patient's chest pain is sometimes associated with shortness of breath. Patient was diagnosed with:

1. History of aortic dissection. The patient has evidence of a Type B aortic dissection from the thoracic aorta into the iliacs. He is being followed by the surgical services.
2. Hypertension. The patient has noted significant hypertension but this is well controlled. He will be weaned from IV medication and an oral regimen will be instituted.
3. Atelectasis. The patient will be treated with aggressive pulmonary toilet.
4. Deep vein thrombosis prophylaxis.

[REDACTED] in part (Exhibit B)

Medical Assessment of Ability to do Work-Related Activities (Physical).

- Standing, 1 hour
- Walking for ½ hour
- Carrying up to 5 lbs, occasionally
- Squatting, never
- Stooping, occasionally

Patient presented for prescription refills on [REDACTED]
[REDACTED] (Exhibit 1, pp. 4-9)

[REDACTED], in part (Exhibit 1, pp. 10-12)

The claimant has aortic dissection and uncontrolled hypertension which would limit him from any heavy exertion. Claimant retains the capacity to perform light work.

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 for about a month in [REDACTED]. This is considered an unsuccessful work attempt under 20 CFR 416.974(c). 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 diagnoses of aortic dissection, hypertension, renal failure, deep vein thrombosis, and sleep apnea. Claimant also has some physical limitations in regards to standing and walking. In addition, the medical records repeatedly document symptoms of aortic dissection such as an

abrupt onset of tearing or sharp pain, shortness of breath, and interrupted sleep which have required four significant hospital stays in two years.

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 have lasted continuously for more than twelve months. The Claimant's medical records did not document any mental impairment.

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 (Listing) discusses the analysis and criteria necessary to a finding of a listed impairment. The Listing 4.10 *Aneurysm of aorta or major branches* was reviewed. In this matter, the medical records establish a diagnosis of aortic dissection. However, the medical records also establish that Claimant has not been compliant with the prescribed treatment of medication to treat Claimant's high blood pressure.

20 CFR 416.930 addresses the need to follow prescribed treatment.

- (a) What treatment you must follow. In order to get benefits, you must follow treatment prescribed by your physician if this treatment can restore your ability to work, or, . . . if the treatment can reduce your functional limitations so that they are no longer marked and severe.
- (b) When you do not follow prescribed treatment. If you do not follow the prescribed treatment without a good reason, we will not find you disabled or blind or, if you are already receiving benefits, we

will stop paying you benefits.

Because Claimant has not complied with the prescribed treatment 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.

Given the Claimant's height of 5'4" and weight of 246 pounds, Claimant is considered obese after determining his BMI (Body Mass Index). Obesity is no longer considered a listing level impairment. See Social Security Ruling (SSR) 02-1p. However, Obesity can also be considered in determining whether the Claimant can do past relevant or other work. 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.

The trier of fact must determine whether the failure to follow prescribed treatment will defeat a claim for benefits. This is based on Claimant's physical, mental, educational, and linguistic limitations (including any lack of facility with the English language). 20 CFR 416.930(c). Claimant's medical records indicate that he missed four weeks of work during a two year period due to hospitalizations related to his impairment. Granted, these hospitalizations might not have occurred if claimant had been compliant with the prescribed treatment of blood

pressure medications. Claimant's advocate indicated by letter that Claimant had some difficulty obtaining the medications. Furthermore, Claimant has difficulty reading and writing. This administrative law judge finds that Claimant's educational and literacy limitations are good cause for noncompliance.

██████████ determined that Claimant was unable to stand for more than one hour or walk for more than ½ hour during an eight hour work day. Furthermore, Claimant can only carry five pounds occasionally, never squat, and can only stoop occasionally. These limitations take into consideration, Claimant's obesity. These restrictions classify Claimant as capable of sedentary work. Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines 20 CFR 416.967(a). A welder performs semi skilled work that is classified as medium exertion. A general laborer performs work at medium exertional strength or above. It is the finding of the undersigned, based upon the medical data, that Claimant cannot return to his past relevant work.

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 limited to sedentary work based on the following:

1. ██████████ physical functional evaluation as signed ██████████ ;

2. Claimant's 9th grade education and difficulty reading and writing;
3. Claimant's indication that he uses an oxygen tank to sleep at night, that his medication makes him sleepy and weak, and that he is no longer able to perform yard work; and
4. The degree of the chest and back pain described by Claimant prior to hospital admissions.

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 forty-five is considered a *younger individual*; a category of individuals in age group 45-49 when age is a lesser advantage factor for making adjustment to other work.. As Claimant is restricted to sedentary work per [REDACTED] has no transferable skills, cannot perform past relevant work, and has difficulty reading and writing in English (essentially illiterate), this Administrative Law Judge finds Claimant disabled. 20 CFR 201.17.

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 July 31, 2006.

Therefore the department is ORDERED to initiate a review of the application of July 31, 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 in February 26, 2010.

/s/
Jeanne M. VanderHeide
Administrative Law Judge
for Jacqueline Hall-Keith
Department of Human Services

Date Signed: March 4, 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.

JV/dj

2007-13546/JV

cc:

