

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. 2007-18143
Issue No. 2009; 4031
Case No: [REDACTED]
Load No. [REDACTED]
Hearing Date:
February 27, 2008
Wayne 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 February 27, 2008. The Claimant, his sister [REDACTED] and his representative [REDACTED] [REDACTED] appeared at the Department of Human Services (Department) in Wayne County [REDACTED]

The closure date was waived to obtain additional medical information. The medical records were submitted to 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 based on disability (MA-P), retroactive MA-P for months August, September and October 2006 and State Disability Assistance (SDA) program?

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 November 28, 2006 the Claimant applied for MA-P and SDA.
- (2) On January 31, 2007 the Department denied the application; and on October 6, 2008 the SHRT guided by Vocational Rule 202.11 denied the application finding medical evidence supported a capacity to perform other light work.
- (3) On May 9, 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 fifty-one years of age.
- (5) Claimant completed grade 8 and joined the military; and can read and write English and perform basic math skills.
- (6) Claimant last worked in 2006 in a one month attempt, but was a carpet installer for over 20 years.
- (7) Claimant has a medical history of August 2006 chest pain, blood clot; and continued chest pain 3-4 times a week using nitroglycerin, COPD with shortness of breath and wheezing, left elbow loss of strength and anxiety treated medically.
- (8) September 2005, August and October 2006, in part:

September: Stress Echocardiography
Report: IMPRESSION: Negative for inducible ischemia without chest pain, no arrhythmias.
August: Cardiac Doppler: INTERPRETATION: ejection fraction 30-40% (Normal greater than 50%). Grossly normal right ventricular systolic function. Aortic insufficiency.
October: INTERPRETATION: ejection fraction improved 40-50%. Claimant Exhibit G 3-4.

(9) March 2007, in part:

March: To ER C/O chest pain, tightness and shortness of breath. No sweating or nausea. History of angina. Took two nitroglycerin and pain subsided. Now pain free. Medications: Lisinopril, Lasix, Klonopin, Warfarin, Lovastatin and Advair inhaler. PHYSICAL EXAMINATION: BP 128/73. HEENT, Cardiovascular, Abdomen, Extremities, Neurologic: [All within normal limits.] Lungs: scattered rhonchi with good air movement. EKG normal. No ST-T wave abnormalities. No acute infarct. Stress Test was within normal limits. After review of medical records from [REDACTED] cardiologist advised discharge to home with addition of medications. To follow to with cardiology. [REDACTED]

(10) March, April and May 2008, in part:

March: To ER with chest pain on movement. Admitted for two days. On coagulation for DVT from episode last year and Greenfield filter was placed. Smokes two packs cigarettes a day; and smokes marijuana.

Physical examination: [Within normal limits.] Except bilateral leg swelling 1+ non-pitting edema. EKG showed ST depression. Had Echo showing mild obstructive cardiomyopathy and ejection fraction of 65%. Heart cauterization showed normal arteries. Negative lower extremities Doppler for DVT. Discharged to home with medications: Lovastatin, Vicodin, Clorazepam, Warfarin, Aspirin, Lopressor, Prilosec. To follow with PCP. Resume activity as tolerated, quit smoking, monitor weight daily. [REDACTED]. Internal Medicine. Claimant Exhibit I, pp. 9-45.

April: Here for SLEEP STUDY. Smoked up to three packs of cigarettes for 37 years until quit three weeks ago. No chest pain, no shortness of breath, no blood in urine/stool, no abdominal pain. Positive for cough in morning and excessive daytime sleepiness. Physical Examination: BP 129/88, HT 5'10", WT 242, BMI increased to 35. Neck, Lungs, Heart, Abdomen, Extremities, CNS: [All within normal limits.] IMPRESSION: Extremely severe obstructive sleep apnea-hypopnea syndrome. Oxygen normalized at 12 cm of H₂O. Narcolepsy ruled out. Obesity. [REDACTED]. Claimant Exhibit J, pp. 1-5.

May: Underwent uncomplicated implantation of dual-chamber cardioverter-defibrillator. Discharge to follow up with Pacemaker Clinic one week for wound examination and have anti-coagulation level checked in 3-4 weeks. [REDACTED]

Status post-pacemaker: IMPRESSIONS: Normal heart size and pulmonary vessel caliber. No pleural effusions. Mild degenerative changes within thoracic spine. Pacemaker placed over left chest wall without pneumothorax. [REDACTED] Claimant Exhibit I, pp. 1-8.

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 sufficient medical evidence to support a finding that Claimant had physical limitations that are more than minimal and impact basic work activities. The Claimant’s physical impairments meet the duration period. There was no medical evidence of a mental impairment impacting basic work activities.

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 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. The undersigned’s decision was based on Listings 3.00 *Respiratory system*; and 4.00 *Cardiovascular System*.

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 for time periods August 2006 to May 2008 does not meet the intent or severity of the listings. The Claimant had episodic episodes of chest pain; and when treated recovered and was discharged in stable condition. The Claimant’s ejection fraction never met the listing

requirement of 30%; and improved in October 2006. In March 2007 a stress test was normal. There was medical evidence, after the hearing was held in February 2008, that the Claimant underwent an implantation of dual-chamber cardioverter-defibrillator in May 2008. The medical procedure is expected to improve his condition. Medical records indicate the Claimant quit smoking in April 2008 which is expected to improve his breathing. The Claimant was obese; and physicians have recommended weight monitoring. Weight loss is expected to improve his physical functioning. 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 him 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 Claimant's past relevant work was of the strenuous type, installing carpeting for 20 years. Given the strenuous nature of this work; the undersigned decides the Claimant cannot 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 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 light work. At hearing the Claimant testified to possibly of the ability to lift 20-30 pounds. There was no medical evidence of physical function restrictions after May 2008. Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines 20 CFR 416.969:

202.00 *Maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s)*. (a) The functional capacity to perform a full range of light work includes the functional capacity to perform sedentary as well as light work. Approximately 1,600 separate sedentary and light unskilled occupations can be identified in eight broad occupational categories, each occupation representing numerous jobs in the national economy. These jobs can be performed after a short demonstration or within 30 days, and do not require special skills or experience.

(b) The functional capacity to perform a wide or full range of light work represents substantial work capability compatible with making a work adjustment to substantial numbers of unskilled jobs and, thus, generally provides sufficient occupational mobility even for severely impaired individuals who are not of advanced age and have sufficient educational competences for unskilled work.

(c) However, for individuals of advanced age who can no longer perform vocationally relevant past work and who have a history of unskilled work experience, or who have only skills that are not readily transferable to a significant range of semi-skilled or skilled work that is within the individual's functional capacity, or who have no work experience, the limitations in vocational adaptability represented by functional restriction to light work warrant a finding of disabled. Ordinarily, even a high school education or more which was completed in the remote past will have little positive impact on effecting a vocational adjustment unless relevant work experience reflects use of such education.

(d) Where the same factors in paragraph (c) of this section regarding education and work experience are present, but where age, though not advanced, is a factor which significantly limits vocational adaptability (*i.e.*, closely approaching advanced age, 50-54) and an individual's vocational scope is further significantly limited by illiteracy or inability to communicate in English, a finding of disabled is warranted.

Claimant at fifty-one is considered *approaching advanced age*; a category of individuals age 50-54. Under Appendix 2 to Subpart P: Table No. 1—Residual Functional Capacity: Maximum Sustained Work Capability Limited to Light Work as a Result of Severe Medically Determinable Impairment(s), Rule 202.10, for approaching advanced age, age 50-54; education: limited or less—at least literate and able to communicate in English; previous work experience, unskilled or none; the Claimant is “not disabled” per Rule 202.10.

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 and the State Disability 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: February 4, 2009

Date Mailed: February 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.

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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

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