

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.: 2007-18666

Issue No.: 2009, 4031

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

May 14, 2008

Wayne County DHS (35)

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 May 5, 2008. The Claimant and the representative appeared at the Department of Human Service (Department) in Wayne County.

The record was left open to obtain additional medical information. An Interim Order was issued for the Department to obtain an independent medical reexamination; and the results were not submitted by the Department.

But the representative did not submit medical records dated after April 2007. This 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; and the undersigned finds there is sufficient evidence to make a final decision on the application at issue, June 2006; and continuous disability would not be established by a medical exam in 2009 due to the lack of medical records.

ISSUES

Whether the Department properly determined the Claimant is “not disabled” for purposes of Medical Assistance based on disability (MA-P) program, retroactive MA-P to March 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) The Claimant filed an application for MA-P on April 20, 2006; which was denied July 25, 2006; but the Department sent the representative a denial notice on March 23, 2007.
- (2) On March 23, 2007 the Department denied the application; and on April 10, 2009 the SHRT denied the application finding the medical evidence insufficient.
- (3) On June 19, 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 forty-two years of age.
- (5) Claimant completed grade 12; has a cosmetology certificate and real estate training; and can read and write English and perform basic math.
- (6) Claimant last worked in August 2005 doing sales at retail for five years, cosmetology since 1992 with a valid license and last work was November 2006; and has a notary license. Department Exhibit (DE) 1, p.13
- (7) Claimant has alleged a medical history of 2006 heart attack with stent surgery, coronary artery disease, and black-outs due to an injury, hypertension, dizziness, fatigue and untreated depression.

(8) March and April 2006, in part:

Presented to ER in cardiac distress. CPR instituted at home and was defibrillated by EMS and taken straight to cardiac catheterization. 100% occlusion to RCA with surgical stent done. Will need [REDACTED] for 3 months. On [REDACTED] and [REDACTED] 2D ECHO EF 35-45%.

Hospital acquired pneumonia and on respirator, poor neurological status. Sputum positive for MRSA. Maintained on IV antibiotics and blood cultures remained negative. Blood loss positive for gastro cult and rectal blood. GI consulted. Remained stable and back to baseline without more blood positive stools. Neuro status improved with spontaneous eye movements. EEG and CT head were normal. Very confused and tried leaving [REDACTED]. Will likely need sometime to recover. PT/OT initially recommended rehab but by end of hospital stay was able to fully ambulate and did not need rehab. Put on nicotine patch and abstained from smoking. Routine discharge. [REDACTED] Claimant Exhibit (CE) A.

(9) May and December 2006, in part:

May: CONDITIONS/DIAGNOSES: Spasm of muscle.
HISTORY: Presented to ER because she was out of medications and did not take [REDACTED]. C/O midscapular "heaviness" after reaching to do dishes. PHYSICAL EXAMINATION: Constitutional, Eyes, Ears, Nose, Mouth, Throat, Cardiovascular, Respiratory, Gastrointestinal, Genitourinary Musculoskeletal, Neurological, Psychiatric, Hematological, Endocrinology, Vital signs: [All within normal limits.] Except muscle aches. Trophins were negative, no ECG changes, and no pain currently. Arrangements made to follow up at [REDACTED]. Given [REDACTED] Discharge routine. [REDACTED]. CE A and DE 1, p. 23-26

December: CONDITIONS/DIAGNOSES: Chest pain, Hyperlipidemia, Essential hypertension. HISTORY: Noncompliant on meds, continues to smoke, to ER C/O left shoulder pain and shortness of breath for several months. ACS ruled out with 3 negative trophins. LVEF =50%. 20-30 % disease in mid LAD and 30-40% LCx.

Importance of compliance with taking medications reinforces. Hypertension stable. Not at lipid goal. One month of medications given. Given resource for free medications. Follow up at [REDACTED]

██████████ Depression to continue ██████████. Routine discharge.
██████████ CE A.

(10) April 2007, in part:

CURRENT DIAGNOSIS: ASHD, increased lipids, acne, depression, anxiety.

NORMAL EXAMINATION AREAS: HEENT; Respiratory; Cardiovascular, Abdominal, Musculoskeletal, Neuro, Mental.

FINDINGS: drowsy, anxious.

CLINICAL IMPRESSION: Stable.

PHYSICAL LIMITATIONS: Limited. Lifting/carrying up to 10 pounds 2/3 of 8 hour day; up to 25 pounds 1/3 of 8 hour day; stand and/or walk at least 2 hours in 8 hour day; sit less than 6 hours in 8 hour day; no assistive devices are needed; use of both hand/arms for simple grasping, reaching, pushing/pulling, fine manipulating; use of both feet/legs for operating controls. Can meet own needs in home. MENTAL LIMITATIONS: sustained concentration and social interactions. Please refer to psychiatrist for evaluation of depression. Medications: ██████████
██████████. CE A.

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 that to not performing SGA since at the time of hearing. But records indicate working as a cosmetologist from April 2001 to November 2006, which was seven months after the heart attack. There was no further information. 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 medical evidence of cardiovascular disease, hypertension under control with medication and depression treated with Paxil. The medical evidence has established that Claimant has impairments that have more than a minimal effect on basic work activities; and Claimant’s impairments are expected to last. The Claimant’s medical records do not document mental impairments that effect 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 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 undersigned's decision was based on Listing 4.00 *Cardiac System*. There was no evidence of additional heart attacks since March 2006. Physical examinations in June, December 2006 and April 2007 found the Claimant's heart to be normal in function. In April 2007, sustained concentrations and deficits in social interaction were opined. But there was no medical evidence to establish these conditions meet the Listing requirements of 12.00 *Mental Disorders*.

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 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.

Here, the medical findings were essentially normal for all body systems except coronary artery disease. The Claimant was prescribed anti-hyperlipidemia medications. But the medical

records report non-compliance, although she was referenced to free medication resources. The Claimant past work experience was numerous. Costomology, some real estate training, retail sales. At hearing the Claimant testified past work was too strenuous. The undersigned accepts this testimony and does not return the Claimant 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-two is considered a *younger individual*; a category of individuals age 18 to 44. 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 201.27, for younger individual, age 18 to 44; education: high school graduate; previous work experience, unskilled or none; the Claimant is “not disabled” per Rule 201.27.

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 retroactive 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: 04/13/09

Date Mailed: 04/13/09

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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