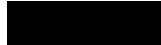


STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

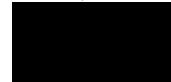


Claimant

Reg. No: 2007-24211

Issue No: 2009, 4031

Case No:



Load No:

Hearing Date:

December 13, 2007

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, the Claimant appeared at a hearing held on December 13, 2007 at the Department of Human Services (Department) in Wayne County.

The closing date was waived. Additional medical records, independent medical examination and pulmonary function test were ordered by an Interim Order. No additional medical records were received. The record closed. The 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) program 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 February 13, 2007 the Claimant applied for MA-P and SDA.
- (2) On April 3, 2007 the Department denied the application; and on August 1, 2007 State Hearing Review Team (SHRT) denied the application finding the insufficient medical evidence.
- (3) On April 30, 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-five years of age.
- (5) Claimant completed grade 10 and training at [REDACTED] and can read and write English and perform basic math.
- (6) Claimant last worked in 2006 for a temporary agency being placed at [REDACTED] [REDACTED] for three years, installing security alarms.
- (7) Claimant has alleged a medical history of breathing problems, chest pain, hypertension, and has a history of substance abuse treatment.
- (8) November 2006, in part:

HISTORY PRESENT ILLNESS: To ER with chest pain four days on left side near back, positive for cough with colored sputum. Denies nausea, diaphoresis, lightheadedness or palpitations, denies shortness of breath but pain occurs with deep breathing. History of hypertension but noncompliant with taking blood pressure pills. Positive for tobacco use and alcohol use, denies drugs.

PHYSICAL EXAMINATION: Well nourished, well developed, in mild to moderate distress, alert and oriented times 3, memory intact, normal judgment, mood and affect. Head, Eyes, Ears, Neck,

Respiratory, Cardiovascular, Gastrointestinal, Musculoskeletal, Skin, Neurological: [All within normal limits.] Intact range of motion all 4 extremities with 5/5 strength all 4 extremities.

ER COURSE/DECISION MAKING: 12-lead EKG no pathological waves, no left ventricular hypertrophy with biatrial enlargement, possible remote septal infarct, nonspecific ST-T wave changes. Complaint of chest pain probably pleuritic and provoked by cough. Denies features associated with cardiac symptoms. Chest X-ray negative for pneumothorax, pleural effusion or other acute processes. Discharged to home with Naprosyn, Doxycycline, HCTZ and Tylenol 3. To follow up with PCP in 24 hours. Condition good and he notes improvement after pain medication.

██████████ Department Exhibit (DE) 1, pp. 10-13.

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 CFR 416.905

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. Thus, 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 (6th Cir 1985).

In this case, the Claimant has presented medical evidence from a [REDACTED] ER visit. See Finding of Fact 8. No other medical records were submitted. The Claimant testified to the last time of medical treatment in July 2007. At hearing the Claimant testified to smoking for 20 years, being independent in ADL, having breathing problems for over one year, dizziness, heart pain that disappears with resting, being treated for an assault [REDACTED].

In March 2007, the month after filing his application, the Claimant told a department interviewer of pain in his right heel after walking one-half block and having a spot on his lung. DE 1, page 4. The Claimant completed DHS-49, writing: fixing his own meals; and doing some household chores but getting bad with housework; and that he takes a bus to the store or gets a ride with a friend; and visiting relatives at home or going to visit them. The Claimant writes admitting to drinking 1-2 beers a few times a month.

There was insufficient evidence to support a finding of physical/mental impairments that have more than a minimal effect on basic work activities.

Based on lack of medical evidence that the Claimant is unable to perform basic work activities, the undersigned finds the Claimant condition is not severe within the meaning of 20 CFR 416.920(c).

Your impairment(s) must be severe and meet the duration requirement before we can find you to be disabled. You must have a severe impairment. If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic

work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further. 20 CFR 916.920a (5) (c).

It is the finding of the undersigned, based upon the medical data and hearing record, that the Claimant is “not disabled” at step two because the Claimant does not have medical documentation of physical or mental impairments that are severe enough to prevent basic work activities; further review of the claim is not necessary.

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 evidence to support a finding that Claimant’s impairments meet the requirements under SSI disability standards, and prevents basic work activities for

ninety days. This Administrative Law Judge finds the Claimant is presently “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 and State Disability Assistance programs.

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 9, 2009

Date Mailed: March 13, 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

cc:

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