

[REDACTED]

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.: 2007-24217
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
March 3, 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 March 3, 2008 at the Department of Human Service (Department) in Wayne County, District 35. The Claimant and his representative [REDACTED] appeared for the hearing.

Medical Review Team (MRT) granted benefits effective February 2007. The record was left open to obtain additional medical information for the time period July 2006 to January 2007. The 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.

ISSUES

Whether the Department properly determined the Claimant is "not disabled" for purposes of Medical Assistance based on disability (MA-P) and retroactive MA-P for the months of July, August and September 2006, and State Disability Assistance (SDA) programs for time periods July 2006 to January 2007?

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 24, 2007 the Department denied the application; and on November 3, 2008 the SHRT guided by Vocational Rule 202.20 denied the application because medical records were evidence for the capacity to perform light work.
- (3) On April 23, 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-five years of age.
- (5) Claimant completed grade 12 and one year of college; and can read and write English and perform basic math.
- (6) Claimant last worked in 2000 as a custodian and driver.
- (7) Claimant has alleged a medical history of asthma, hypertension, gout, heart failure and kidney failure and decreased memory
- (8) July 2006, in part:

Well known to us through outpatient. History of asthma, COPD and recent development of heart failure which has been difficult to control without medications. To ER with shortness of breath and wheezing and has been using home medications without relief.

After testing and discussion with cardiologist, was determined to have heart failure with cardiomyopathy and would benefit from ICD. Tolerated the dialysis well and after ambulating was discharged and to return one week. Medications: Advair, Atrovert, Coreg, Zestril, aspirin, Protonix, Theodur and Zyloprim. [REDACTED] Department Exhibit (DE) 1, pp. 5, 10-14 and Claimant Exhibit D, 1-21.

- (9) November and December 2006, in part:

To ER with shortness of breath with history of heart disease, CHF, pacemaker placement, asthma and hypertension, states ran out of Theophylline. This is likely his asthma.

HOSPITAL COURSE: Admitted and found to have acute CHF exacerbation and mildly elevated BNP levels and improved on IV diuretics. After consultation with cardiologist and pulmonologist was discharged home in stable condition with prescribed medications. To follow in with [REDACTED] 305 days and [REDACTED] one week and have blood check of electrolytes, BUN, creatinine and glucose. [REDACTED] Claimant Exhibit A, 1-13.

December: With cardiomyopathy; dilated myopathy. Stress test results were unremarkable and had a defibrillator implanted, He has not been following with a cardiologist or taking his medications regularly due to insurance. No chest pain or discomfort but shortness of breath may be related to underlying lung disease.

PHYSICAL EXAMINATION: HT 68“, WT 252, BP 126/84. No carotid bruits. Lungs were clear. Cardiac regular rate and rhythm, no murmurs or gallops. Abdomen soft. Femoral pulses were equal bilaterally. EKG was normal. Present cardiac status stable. I have given him samples of current medications to continue. He need a current implantable defibrillator check. [REDACTED] Claimant Exhibit C, pp. 1-2.

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 2000. 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 to support a finding that the Claimant has physical limitations which impact his abilities to perform basic work activities. See finding of facts 8-9. There were no medical records establishing a mental impairment that prevented basic work activities. It is necessary to continue to evaluate the Claimant’s impairments under step three.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the claimant’s physical/mental 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 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, the medical records establish dilated

cardiomyopathy with mildly compensated heart failure; etiology multifactoral including increased fluid intake, noncompliance with diet, renal insufficiency and possible sleep apnea and asthma exacerbation.

Appendix 1 of Subpart P of 20 CFR, Part 404. Listing 4.02 *Chronic Heart Failure* is relevant. After reviewing the criteria of the listings, the undersigned finds the Claimant's medical records do not substantiate that the Claimant cardiac impairment does not meet the intent and severity of listing requirements of 4.02 because of an insufficiency of medical records.

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 custodial type activities including truck driving last performed in 2000. The undersigned has reviewed all the medical records and finds the Claimant has a serious and life lasting heart impairment which is not going to get better. The Claimant will not be cured; and this is still a young man. The undersigned decides the Claimant cannot return to past relevant work or to any other work due to the seriousness of the impairments.

It is the finding of the undersigned, based upon the medical data and hearing record that Claimant is “disabled” at the step four for the time period July 2006 to January 2007.

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 impairments meet the disability requirements under SSI disability standards, and prevents past relevant work and other work for ninety days. This Administrative Law Judge finds the Claimant is “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 “disabled” for purposes of the Medical Assistance program and the State Disability Program for time period July 2006 to January 2007.

It is ORDERED; the Department’s determination in this matter is REVERSED.

Accordingly, The Department is ORDERED to initiate a review of the October 2006 application to determine if all other non-medical eligibility criteria are met. The Department shall inform Claimant and representative of its determination in writing. Assuming Claimant is otherwise eligible for program benefits, the Department shall review Claimant's continued eligibility for program benefits at the time of the presently set evaluation time period; or if none, March 2010.

/s/ _____
Judith Ralston Ellison
Administrative Law Judge
For Ishmael Ahmed, Director
Department of Human Services

Date Signed: 03/12/09

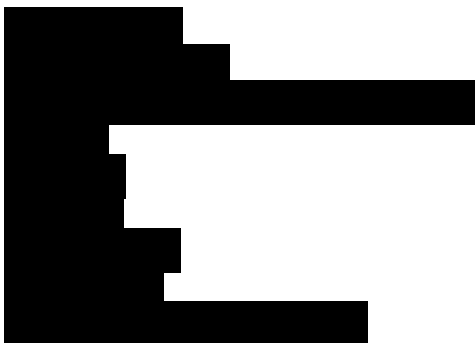
Date Mailed: 03/12/09

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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