

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.: 2007-24748
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
November 28, 2007
Wayne County DHS (57)

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 November 7, 2007. The Claimant appeared at the Department of Human Service (Department) in Wayne County.

The record was left open to obtain additional medical information. The State Hearing Review Team (SHRT) reviewed the new records 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) 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 March 14, 2007.

- (2) On April 18, 2007 the Department denied the application; and on March 19, 2008 the SHRT guided by Vocational Rule 201.28 denied the application because medical records indicated a capacity to perform sedentary semi-skilled work.
- (3) On July 13, 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 can read and write English and perform basic math.
- (6) Claimant last worked in July 2006 as a post office inspector for 7 years; and was on FMLA until May 2007; and prior worked as a security guard and tire technician.
- (7) Claimant has alleged a medical history of multiple right knee surgeries since 2006 with infections leaving arthritis and range of motion limits; degenerative joint disease of left knee, hypertensive urgency and treated with medication and depression untreated.
- (8) November and December 2006, in part:

November: History of degenerative joint disease of bilateral knees with hypertension and obesity and total right knee replacement in September 2006; who appeared with signs of infection post operatively. X-ray did not show osteomyelitis but did show edema. X-ray showed enlarged heart and tortuous aorta. Admitted with cellulites. Treated with antibiotics, incision and drainage and found positive for MRSA. Had blood transfusion and noted to be iron deficient. Was discharged to home health care for 8 weeks of antibiotics. Follow with [REDACTED] and [REDACTED] and [REDACTED]. Activity as tolerated. [REDACTED]

December: Presented with epistaxis; and has hypertension and is compliant with medications. BP 168/106. Treated and bleeding was resolved and released home with family to take home medications. [REDACTED]. Department Exhibit N, pp. 223-348.
- (9) January to December 2007, in part:

January: Admitted for total right knee replacement complaining of pain and decreased mobility. Had total right knee replacement a few months ago followed by cellulites and infection. Has failed outpatient antibiotics and has osteomyelitis under tibial tray. Blood pressure 159/100. CBC abnormalities. Tolerated procedure and was discharged home in stable condition with adjusted blood pressure medication and [REDACTED]. Follow with [REDACTED]. Physical therapy and full weight bearing right leg with right knee brace. [REDACTED]. [REDACTED] pp. 190-222

February: Two weeks later: total right knee replacement and admitted for I & D right knee. Post Operative Diagnosis: Infected right knee arthroplasty, Cellulites and osteomyelitis right knee with open wound. Discharged to home. See [REDACTED] in 14 days. [REDACTED] pp. 143-189

March: DISCHARGE DIAGNOSES: Right upper extremity superficial venous thrombosis; History of right knee methicillin resistant Staph Aureus infection, status post removal of hardware. Hypertension.

BP 160/101. Right upper extremity had PICC line recently and was receiving IV vancomycin and developed right shoulder swelling, redness and pain. Had cardiac work up for chest pain and 2D echocardiogram showed basal inferior wall hypokinesis, ejection fraction 55%, mild dilation, mild to moderate left ventricular hypertrophy, diastolic dysfunction, elevated left ventricular filling pressures and apical dysfunction. Negative cardiac enzymes, negative for pulmonary embolism and cardiology did not plan further work up. So discharged home in stable condition. Follow with [REDACTED]. Non-weight bearing right lower extremity. Knee immobilizer and medications were prescribed. [REDACTED], pp. 127-142.

June: Admitted for right stage II revision total knee replacement. Able to ambulate with PT and by day 3 pain was well controlled. X-rays bilateral knees: Right knee shows total arthroplasty. Left knee shows advanced degenerative joint disease changes with complete loss of medial joint space compartment and advanced narrowing of lateral joint space compartment. Mild to moderate degenerative joint disease is noted of the hips. Ankles are unremarkable. Maintained in brace, vital signs stable and discharged with prescriptions for [REDACTED] and blood pressure medications and see [REDACTED] in two weeks. [REDACTED] pp. 56-86.

December: Follow up post operative in June 2007. He will not be able to return to his postal service job. Will need a sitting job with standing and walking every now and then. Thinking of turning to truck driving. Not to drive on [REDACTED] or until his strength returns. Some range of motion limitations. [REDACTED].

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

has not performed 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 (6th Cir 1985)

In this case, the Claimant has presented sufficient medical evidence to support physical limitations. The medical evidence has established that Claimant has a physical impairment that

has more than a minimal effect on basic work activities since July 2006; and Claimant's impairments are expected to last.

The Claimant's medical records do not document mental impairments that effect basic work activities. During the hospitalizations the Claimant was diagnosed as alert, and orientated times 3.

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 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.

The claimant has musculoskeletal impairments and hypertension which has caused heart damage by 2D echocardiogram. 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 1.00 *Musculoskeletal System* which requires a loss of function. The medical records do support a severe loss of function under 1.00Ba of both lower extremities due to degenerative joint disease identified shown in X-rays of both left knee and both hips. But there was no medical evaluation of range of motion limitations in the medical records. There was evidence that the Claimant can drive a motor vehicle 2-3 times a month which indicates physical function of lower extremities.

This Administrative Law Judge finds the Claimant is not presently disabled at the third step for purposes of the Medical Assistance (MA) program due to the lack of medical records

establishing the intent and severity of the listings. 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 most body systems except the physical limitations of the musculoskeletal system and end organ damage from hypertension to the heart of the Claimant. See finding of fact 8-9.

The undersigned notes that the Claimant is young [age forty-five] for heart damage as evidenced on the 2D echocardiogram; and this damage will last a lifetime. Additionally, although [REDACTED] opined a return to sedentary type work activities and the SHRT agreed with this, the undersigned disagrees. The medical facts are established: bilateral degenerative joint disease of knees and hips with end organ heart damage disables the Claimant from returning to past relevant work and other work.

It is the finding of the undersigned, based upon the medical data and hearing record that Claimant is "disabled" at step four.

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.

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

Accordingly, The Department is ORDERED to initiate a review of the March 2007 application to determine if all other non-medical eligibility criteria are met. The Department shall inform Claimant of its determination in writing. Assuming Claimant is otherwise eligible for program benefits, the Department shall review Claimant's continued eligibility for program benefits in May 2010.

/s/

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

Date Signed: 05/01/09

Date Mailed: 05/01/09

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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