

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.: 2007-26369

Issue No.: 2009, 4031

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

February 27, 2008

Wayne County DHS (41)

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 and her representative [REDACTED] appeared at a hearing held on February 27, 2008 at the Department of Human Service (Department) in Wayne County.

The closing date was waived. Additional medical records were submitted and reviewed by the State Hearing Review Team (SHRT) and the application was denied. 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) retroactive MA-P for the months of October 2006 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 January 29, 2007 the Claimant applied for MA-P and SDA.
- (2) On February 27, 2007 the Department denied the application; and on February 11, 2009 the SHRT denied the application finding the medical records established the ability to perform past relevant work.
- (3) On May 22, 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 sixty-one years of age.
- (5) Claimant completed grade 12; and can read and write English and perform basic math.
- (6) Claimant last worked in 2002 in a factory on presses, hilo, shipping/receiving, part sorter, dispatcher/billing and was a trucker driver.
- (7) Claimant has alleged a medical history of heart attack in October 2006 with stenting, high cholesterol, fatigue, light-headedness, decreased energy and headache; and denies mental impairments.
- (8) November 2006, in part:

CARDIOLOGY CONSULTATION: F/U visit. History of coronary artery disease, hypertension and hyperlipidemia status post cardiac catheterization with stent placement October 2006. Previous stent in 2001. States fully functional, without limitations. Denies chest pain, shortness of breath, paroxysmal nocturnal dyspnea, orthopnea, ankle edema or any syncope. Medications: Asudomedifine, Metoprolol, Plavix, aspirin, Bupepirion and nitroglycerin. Currently smoking and has been smoking for 46 years. Physical Examination: [All within normal limits.] Except: point of maximum intensity at fifth intercostals at midclavicular line. [REDACTED] Department Exhibit (DE) 1, pp. 21-22

2D Echocardiography and Cardiac Doppler: Mild cardiac concentric hypertrophy and preserved left ventricular function with ejection fraction of 55%. Other wise normal. [REDACTED] DE 1, p. 14

(9) June 2008, in part:

CARDIOLOGY CONSULTATION: Underwent Taxus stent in RCA in April 2007; and since then has been lost to follow up care. C/O some shortness of breath on exertion, bilateral numbness of hands, some near syncopal episodes but denies loss of consciousness or any syncopal episodes. Difficulty of breathing on maximum exertion. Denies paroxysmal nocturnal dyspnea, orthopnea or ankle edema. Angina is atypical and represents heartburn. Persantine stress test showed some very small peri-ischemia or infarct but she is asymptomatic. Doing well after superficial injury in a fall. Carotid Duplex was negative. Otherwise she is asymptomatic and fully functional without limitations. Dizzy spells appear to be benign positional vertigo and related to abrupt change of position. Medications: Metoprolol, Plavix, Aspirin, Bupepirion, sublingual nitroglycerin, Zantac, Os-Cal, simvasatin and Zetia.

Physical Examination: [All within normal limits.] Carotid duplex was negative. Ejection fraction in April 2007 was 50%. Segmental ABIs in May 2008 showed right of 1.10, left 1.02, normal flow and normal ABI. May 2008 stress test showed small moderate size fixed defect of distal aspect of lateral wall. Small amount of arterial infarct ischemia, otherwise normal. June 2008 2D echocardiogram showed normal left ventricular size and thickness, ejection fraction of 67% and no valvular abnormalities. Laboratory tests in April 2008 showed normal hemoglobin and INR. Liver panel was normal. Cholesterol was 268, Triglycerides are 208, LDL is 178, HDL is 48. TSH is normal. Pulmonary Function Test: PREMED: normal. [REDACTED] Claimant Exhibit D, pp. 46-49

INDEPENDENT MEDICAL EXAMINATION: History: Coronary artery disease with stent placement in 2001, 2006 and 2007. Medications: Fe, Calcium, Vitamin E, Mintox, Simvastatin, Metoprolol, Plavix, aspirin and medication for osteoporosis.

PHYSICAL EXAMINATION: HT: 60", WT: 112, BP 100/60. Vision 20/15 with glasses both eyes. Hands, Right inguinal area, Lower extremities, Straight Leg Raising. Dexterity, Muscle strength, Grip strength, Sensory Exam, Coordination, Range of Motion of all joints, Deep tendon reflexes, Gait, heel/toe/tandem, Dress/Undress, Squatting, On/off exam table: [All within normal limits.] Except: extreme degree of pallor and shortness of breath during examination movements. No objective clinical findings for

complaints of right inguinal pain, restless leg syndrome, bilateral parathesias. [REDACTED]. [REDACTED]. DE N, pp. 1-6.

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 no performance of SGA since 2002 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 that supports physical limitations but there was no medical evidence of mental limitations. See finding of facts 8-9. The

medical evidence has established that Claimant has a physical impairment that has more than a minimal effect on basic work activities. The Claimant denied mental impairments at the hearing. 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 and 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 impairments 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 Claimant has coronary artery disease; and has had stent placements in 2001, 2006 and 2007 and some shortness of breath on exertion. There were no medical records establishing range of motion limitations for her complaints of bilateral hand paresthesias, right inguinal pain or restless leg syndrome; and the pulmonary function test in June 2008 was normal. See finding of fact 9.

Under Appendix 1 of Subpart P of 20 CFR, Part 404, Listing 4.00 *Cardiovascular System* fits the medical evidence in this case. There were no medical records that the Claimant suffered another coronary artery blockage. Carotid arteries were without blockage. The Claimant has been medically treated for coronary artery disease. There were no medical records establishing the coronary artery disease was disabling her physical functioning. The Claimant told [REDACTED] she had no functional limitations; and [REDACTED] opined the Claimant was asymptomatic. See finding of fact 8-9

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 factory type work in 2002. At hearing the Claimant testified to no ability to return to past relevant work. Based on this testimony, the undersigned decides they 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 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 totality of 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. 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 sixty-one is considered *advanced age*; a category of individuals age 55 and over. 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 202.04, for advanced age, age 55 and over; education: high school graduate or more; previous work experience, unskilled or none; the Claimant is “disabled” per Rule 202.04.

It is the finding of the undersigned, based upon the medical data and hearing record that Claimant is “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 sufficient evidence to support a finding that Claimant’s impairments meet the disability requirements under SSI disability standards, and prevent substantial gainful employment for ninety days. This Administrative Law Judge finds the Claimant is “disabled” for purposes of the SDA program.

cc:

