

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.: 2007-27690

Issue No.: 2009, 4031

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

November 19, 2008

Wayne County DHS (19)

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 his representative [REDACTED] appeared at a hearing held on November 19, 2008 at the Department of Human Service (Department) in Wayne County.

At hearing, testimony was received that the Social Security Administration (SSA) had denied disability in February 2008 for lumbar spine disease; and the SSA denial was not appealed. Thus, pursuant to PEM 260, the hearing was subject to dismissal.

But evidence was given that the SSA did not evaluate for disability on the basis of skin disorders. Therefore the hearing proceeded. The closing date was waived. An Interim order was issued for additional medical records. No medical records were received; and 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) and State Disability Assistance 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) On May 10, 2007 the Claimant applied for MA-P and SDA.
- (2) On June 29, 2007 the Department denied the application; and on November 30, 2007 the SHRT guided by Vocational Rule 202.20, denied the application finding the impairment did not preclude unskilled light work.
- (3) On July 17, 2007 the Claimant filed a timely hearing request protesting the determination of the Department.
- (4) Claimant’s date of birth is [REDACTED]; and the Claimant is forty-eight years of age.
- (5) Claimant completed grade 12; a heavy equipment operator’s certificate; and can read and write English and perform basic math.
- (6) Claimant last worked in 2005 performing residential painting and doing odd painting work.
- (7) Claimant has alleged a medical history of ten years of psoriasis with open sores on several body areas, buttocks, front//back both legs, knees, elbows, hands with tenderness and healing over wounds, unresolved by treatment except for temporary time periods.
- (8) June 2007, in part:

CURRENT DIAGNOSIS: Chronic lumbar pain and disk disease;
hypertensive, anxiety, severe generalized psoriasis.

HT: 73", WT 272 pounds, BP 130/88, Visual acuity best corrected 20/20 bilaterally.

FINDINGS: Severe generalized psoriasis arms, legs, back and all over and uses steroid cream. Lower back [Illegible] all the time on Lorcet, Naprosyn. No back surgery yet. No diabetes, stroke, kidney, liver problems. Pt. has no cane or back brace, CNS [Illegible]

CLINICAL IMPRESSION: Deteriorating.

PHYSICAL LIMITATIONS: Limited and expected to last 90 and over. Lifting/carrying up to 20 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; use of both hands/arms for simple grasping, reaching, fine manipulating; no pushing/pulling; use of both feet/legs for operating foot controls

FINDING ABOVE LIMITATIONS: Rt. Has severe generalized psoriasis. Mental: Recommend psychiatry evaluate. Medications: Xanax, Naprosyn, Coricet, BO pill, [REDACTED] [REDACTED] Department Exhibit (DE) 1, pp. 15-16

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 SGA. 20 CFR 416.920(b) In this case, under the first step, Claimant testified to not performing SGA since 2005. Therefore, the Claimant is not disqualified from 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 sufficient medical evidence to support a finding that Claimant has more than minimal physical limitations that would effect abilities to perform basic work activities more than minimally. See finding of fact 8.

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 does not support findings that the Claimant’s 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 can not be found to be disabled.

Appendix I, Listing of Impairments (Listing) discusses the analysis and criteria necessary to a finding of a listed impairment. Listing 8.00 states the medical records must establish the severity and intent of the listing. The assessment is based on the extent of skin lesions, frequency of flare ups of skin lesions, how symptoms including pain limit function, the extent of treatment and how the treatment effects the person; and with a three month medical record of the condition

persisting despite continuing treatment. Listing 8.05 *Dermatitis* discusses psoriasis. Here the Claimant does not meet this listing due to the lack of medical records establishing the criteria above.

In this case, this Administrative Law Judge finds the Claimant is not 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) prevents 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 residential painting. At the hearing the Claimant did establish to a partial extent by exposing the psoriasis on both his upper and lower extremities. The undersigned agrees with [REDACTED] and saw a severe case of excoriated skin at the joints, knees, elbows, to some extent his hands. Body truck areas of psoriasis were not viewed but described. Thus the undersigned given the evidence decides the Claimant cannot return to past relevant work of residential painting given the positions required of a person painting; and using hands, arms, legs, and knees. The Claimant does not have other physical problems except strong and appropriate medical testing records for lumbar spine disorders including spinal canal stenosis and wedge compressions at L1, L3-L4 and L4-L5.

Title XVI of the Social Security Act authorizes the judge to take notice of evidence; and based on the medical record evidence, the undersigned decides the Claimant is “disabled” at step four because he cannot return to past relevant work or return to other work with skin and spine disorders.

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 or prevent 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 based on disability and State Disability Assistance programs.

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

Accordingly, The Department is ORDERED to initiate a review of the May 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 **six months** due to the lack of medical records, September 2009.

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

Date Signed: 03/26/09

Date Mailed: 03/27/09

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

cc:

