

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: 2007-29451  
Issue No: 2009, 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
February 28, 2008  
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted by Administrative Law Judge [REDACTED] on February 28, 2008 pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department. Judge [REDACTED] left State employment before the hearing decision was written. The undersigned Administrative Law Judge has written this hearing decision after review of evidence in the record including the recording of the actual hearing. At the hearing, the Claimant was present and testified. [REDACTED] was present and represented Claimant. [REDACTED], appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA") program.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material and substantial evidence on the whole record, finds as material fact:

1. Claimant filed for MA & SDA on May 25, 2007. Claimant requested MA and SDA retroactive to March 2007.
2. Claimant's impairments are carpal tunnel syndrome, L5-S1 radiculopathy, arthritis in knees, cardiac disease, high blood pressure, and closed head injury.
3. Claimant's physical symptoms are aches and pains in left shoulder and elbow that wake him up at night, pain in back when walking, dizziness and memory loss.
4. Claimant testified that he was in an auto accident in [REDACTED] and suffered a closed head injury.
5. Claimant testified that he uses a cane, inhalers, and a back brace. Claimant also testified that his doctor prescribed CTS braces, but he has not had the money to obtain them.
6. Claimant is 6'0" tall and weighs 288 pounds.
7. Claimant testified to the following physical limitations:
  - Sitting – hours
  - Standing – 30 min.
  - walking – 75-100 feet
  - Lifting – less than 8 hours
  - no gripping or grasping
8. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
9. Claimant is 51 years of age.
10. Claimant completed 11<sup>th</sup> grade in high school. Claimant testified that he does not read or write well.
11. Claimant was last employed in 2006.
12. Claimant has the following employment experience: group home aide, micro-plating at a bumper shop, dumping returned bottles.



3. Palpitations
4. Atypical chest pain

Stress Test [REDACTED], in part (Exhibit 1, pp. 22-23)

IMPRESSIONS:

1. Myocardial perfusion imaging is abnormal without artifact
2. There is moderate area of increased perfusion in the area of the inferior wall consistent with partially reversible ischemia
3. Overall left ventricular systolic function was abnormal with regional wall motion abnormalities
4. Blood pressure was hypertensive at rest

“No EKG evidence of ischemia” - Id. at 23.

[REDACTED] in part  
(Exhibit 1, pp. 5-7)

Functional Capacity due to cardiac disease: “slight limitation of physical activity” limited to:

1. Lifting – frequently less than 10 lbs., occasionally up to 25 lbs.
2. Standing/walking – less than 2 hrs in an 8 hour work day
3. No fine manipulating with hands or arms.
4. Mental limitations of comprehension and memory

[REDACTED] DHS Medical Exam Report, in part.

Physical limitations from bilateral carpal tunnel syndrome and L5-S1 radiculopathy

Limitations: Lifting – none  
Standing/walking – 2 hours in a 8 hour work day  
No grasping with hands

[REDACTED] in part, (Exhibit 1, pp. 1-2)

Clinical Impression: EMG revealed bilateral L5-S1 nerve root irritation.

[REDACTED], in part, (Exhibit 1, pp. 3-4)

Clinical Impression: EMG revealed right carpal tunnel syndrome and bilateral C5-6 nerve root irritation.

Recommendations: Right wrist brace, NSAIDS

[REDACTED] DHS Medical Exam Report, in part (Exhibit 1, pp. 6-9)

Limitations as follows:

Lifting – Occasionally less than 20 lbs.

Stand/walk – 2 hrs in 8 hour work day

Repetitive Actions – limited in both hands/arms.

[REDACTED], in part (Exhibit 1, pp. 12-16)

95% stenosis of right coronary artery with resulting Angioplasty catheterization showed preserved left ventricular function with ejection fraction approximately 55% - 60%

[REDACTED] in part.

**MUSCULOSKELETAL EXAMINATION:** The patient had moderate to severe difficulty getting off and on the examining table and was unable to walk a straight line or squat unless he had a cane to hold on to and even then it was difficult.

#### 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.

### **1. Current Substantial Gainful Activity**

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). In this case, under the first step, the Claimant last worked in 2006. Therefore, the Claimant is not disqualified from receipt of disability benefits under Step 1.

### **2. Medically Determinable Impairment – 12 Months**

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 F.2d 685 (6<sup>th</sup> 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 F.2d 860, 862 (6<sup>th</sup> Cir. 1988); *Farris v Sec’y of Health & Human Servs*, 773 F.2d 85, 90 (6<sup>th</sup> Cir. 1985).

In this case, the Claimant has presented medical evidence from medical providers showing carpal tunnel syndrome, L5-S1 radiculopathy and cardiac disease. Claimant also testified to physical limitations in terms of sitting, standing, walking and lifting which are supported by his physicians.

The medical evidence has established that Claimant has physical and mental impairments that have more than a minimal effect on basic work activities; and Claimant’s impairments have lasted continuously for more than twelve months. It is necessary to continue to evaluate the Claimant’s impairments under step three.

### **3. Listed Impairment**

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 and mental impairment 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 discusses the analysis and criteria necessary to a finding of a listed impairment. The Listings 4.04 *Ischemic heart disease* and 1.04 *Disorders of the spine* were reviewed. 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 because the medical evidence reviewed does not show that the physical impairments meet the intent or severity of the listings. Sequential evaluation under step four or five is necessary. 20 CFR 416.905.

#### **4. Ability to Perform Past Relevant Work**

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.

Claimant has been placed on physical limitations by his cardiologist and his neurologist as well as a DHS medical examiner. Comparing the various limitations and taking into consideration Claimant's testimony, this Administrative Law Judge has determined that Claimant is able to lift up to 10 lbs. occasionally, is limited to walking/standing less than 2 hours/day, and is unable to grip or grasp with either hand. In addition, claimant needs a cane for mobilization and to get up from bending/squatting.

Claimant's prior employment, based on his testimony of his job duties would have been considered unskilled and light in exertional level as they required a significant portion of the day standing. Based on this information the undersigned finds the Claimant unable to return to past

relevant work in any of the above mentioned prior occupations. Evaluation under step five will be made according to the law.

### **5. Ability to Perform Other 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 N.W.2d 829 (1987).

It is the finding of the undersigned, based upon the medical evidence, objective physical findings, and hearing record that Claimant's RFC for work activities on a regular and continuing basis is functionally below the limits of sedentary as sedentary work requires "good use of hands and fingers for repetitive hand-finger actions". 20 CFR 416.967.

Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines 20 CFR 416.967(a) describes sedentary work:

*Sedentary work.* Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Claimant at fifty-three years is considered an *individual approaching advanced age*; a category of individuals in age group (50-54) who may be significantly limited in vocational adaptability if restricted to sedentary work. Considering Claimant's medical limitations, this Administrative Law Judge finds that claimant's impairments render claimant unable to do even sedentary work. Claimant is therefore disabled for the purposes of the programs. 20 CFR 404, Subpart P, Appendix 2, Rule 201.00(g).

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 impairment has disabled him under SSI disability standards. This Administrative Law Judge finds the Claimant is "disabled" for purposes of the MA program.

#### DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant is medically disabled under the MA program as of May 25, 2006.

Therefore, the department is ORDERED to initiate a review of the application of May 25, 2006, if not done previously, to determine claimant's non-medical eligibility. The department shall inform the claimant of the determination in writing. The case shall be reviewed March 6, 2009.

\_\_\_\_\_/s/\_\_\_\_\_  
Jeanne M. VanderHeide  
Administrative Law Judge  
for Jacqueline Hall-Keith

Date Signed: 3/16/09

Date Mailed: 3/16/09 dj

**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 mailing 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.

JV/dj

cc:

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