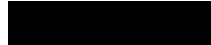


STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Claimant

Reg. No.: 2007-29829

Issue No.: 2009, 4031

Case No.:

Load No.:

Hearing Date:

January 7, 2008

Wayne County DHS (76)

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 January 7, 2008. The Claimant and his representative appeared at the Department of Human Service (Department) in Wayne County.

The record was left open to obtain additional medical information. The representative submitted medical information labeled Claimant Exhibit (CE) pages. 1-28 was submitted to the State Hearing Review Team (SHRT) and the application was denied. This matter is now before the undersigned for final decision on review of CE pages 1-28.

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 (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) The Claimant filed an application for MA-P and SDA on August 2, 2007.
- (2) On August 16, 2007 the Department denied the application; and on July 21, 2008 the SHRT guided by Vocational Rule 202.20/202.21 denied the application because medical records indicated a capacity to perform light work.
- (3) On August 21, 2007 the Claimant filed a hearing request to protest the Department's determination.
- (4) Claimant's date of birth is [REDACTED], and the Claimant is forty-four years of age.
- (5) Claimant completed grade 12, associates' degrees in General Studies/General Business; and can read and write English and perform basic math.
- (6) Claimant last worked in December 2005 in general labor including maneuvering giant machines like mixers, sandblasters and floor sanders.
- (7) Claimant has alleged a medical history of 2006 cervical fusion with residual pain on turning, bending, head movements, restricted sleep positions, right carpal tunnel syndrome, right/left hand numbness, lumbar pain, angry outbursts with depression.
- (8) April and July 2007, in part:

April: Seen in past for severe neck pain and spasms. Underwent cervical decompression, fusion and instrumentation at C4-C5 for work injury in May 2006. Continues to have severe pain in the neck and takes [REDACTED]. Sees [REDACTED] and [REDACTED] intermittently. History of significant lower back pain without surgery.

Previous EMGs and MRIs show objective pathology. [EMG: May 2006: Evidence of right more than left C4-C5 radiculopathy with ongoing denervation.] This is new compared to February 2005.

Bilateral mild carpal tunnel syndrome which has improved. Mild C6-C7 radiculopathy in past and nearly resolved.]

Physical Examination: neck spasms, intermittent pain. Still quite strong but weaker than before. Reflexes are symmetric. Sensation intact. Cognition intact. Affect good for circumstances.

He can lift up to 10 pounds frequently, occasionally 10 to 20, never over 20. No need for walking assistive devices. Needs occupational retraining. And does not need further neurological work up. [REDACTED]

July: INDEPENDENT PSYCHOLOGICAL EXAMINATION:
History: Does voluntary work at [REDACTED]. Came here driving his own car, hygiene grooming are fair. Gait normal and motor activity normal. No unusual or bizarre behavior. Appears realistic not delusional or grandiose. Goes to church, watches TV, able to cook and do chores at home.

Speech clear and coherent and goal directed. Thought process well organized and easy to follow. Denied auditory and delusional thoughts or hallucinations, denied suicidal and homicidal ideation. Alert, cooperative, friendly and orientated times 3. Denies a feeling of depression, no manic or hypomanic actions, no obsessions, compulsions and his mood was euthymic.

Memory, Information, Calculations, Abstract Thinking, Similarities/Differences, Judgment: [all within normal limits.] Can manage own benefit funds. [REDACTED]. Department Exhibit pp. 7-9.

(9) September 2007, in part:

September: History: Neck and low back pain. Surgery in 2006. Still significant amount of neck and low back pain and posterior type headaches. Shooting pain from back to head on right side. [REDACTED] taken four times a day and [REDACTED]. Physical Examination: Significant spasm in posterior neck and tenderness of right occipital nerve reproducing head pain. Evidence of anterior cervical decompression. Is quite a large gentleman and has some diffuse weakness for size and strength. Relaxes slightly brisk. Remainder of neurological examination is nonfocal. Given injection for nerve and muscle spasm. Limited to lifting no more than 10 pounds and believed to be permanent. [REDACTED] 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 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; and Claimant’s impairments are expected to last.

The Claimant's medical records do not document mental impairments that effect basic work activities. The undersigned finds the mental evaluation of [REDACTED] to be unreliable and inconsistent with the predominance of medical records and [REDACTED] own mental status report; and thus, declines to use the diagnosis of Psychosis developed by the doctor. 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 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 (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 not support a severe loss of function under 1.00Ba of either the Claimant's upper or lower extremities. There was no medical evaluation of range of motion limitations; and no medical records were submitted after September 2007; and the hearing was in January 2008 and the record left open.

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 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 all body systems except the physical limitations of the musculoskeletal system. See finding of fact 8-9. There was medical evidence establishing causation for the Claimant's pain but there was also evidence of the Claimant's physical functional ability. The Claimant's last work was quite strenuous in general labor; and the undersigned finds this persuasive that the Claimant 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 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 sedentary work. Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines 20 CFR 416.967(a):

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 forty-four is considered a *younger individual*; a category of individuals age 18 to 49. Under Appendix 2 to Subpart P: Table No. 1—Residual Functional Capacity: Maximum Sustained Work Capability Limited to Sedentary Work as a Result of Severe Medically Determinable Impairment(s), Rule 201.27, for younger individual, age 18 to 49; education: high school graduate; previous work experience, unskilled or none; the Claimant is “not disabled” per Rule 201.27.

It is the finding of the undersigned, based upon the medical data and hearing record that Claimant is “not 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 insufficient medical evidence to support a finding that Claimant's impairments meet the disability requirements under SSI disability standards, and prevents other work activities for ninety days. This Administrative Law Judge finds the Claimant is "not 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 "not disabled" for purposes of the Medical Assistance program and State Disability Assistance programs.

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

/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

cc:

