

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.: 2008-10585
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
April 9, 2008
Calhoun County DHS (21)

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 April 9, 2008. The Claimant appeared at the Department of Human Service (Department) in Calhoun 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. SHRT requested an independent medical examination; and the Department sent medical records from April 2008; already reviewed by SHRT. The record closed and 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 (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 grant of benefits for MA-P and SDA was re-determined in November 2007.
- (2) On November 21, 2007 the Department denied disability; and on December 8, 2008 SHRT denied the application based on insufficient evidence.
- (3) On November 28, 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-eight years of age.
- (5) Claimant completed grade 11 and a GED; and can read, can understand and write English as evidence by completion of an application in October 2007. Department Exhibit (DE) 1, pp. 443-440
- (6) Claimant last worked in 2000 in a factory for 15 years.
- (7) Claimant has alleged a medical history of multiple back surgeries with the last in 2006, right and left knee surgeries with inability to sit, stand, or sleep due to chronic pain; and depression.
- (8) April 2008, in part:

WT: 163, HT: 67", BP 148/98. Psychiatric: Appropriate judgment and insight, Oriented times 3. Normal recent and remote memory. Mood and affect appropriate. Awaiting scheduling back surgery with [REDACTED]. States quit smoking. Pain began 5 years ago lower lumbar region and pain radiates into left foot. Surgeries include Laminectomy/otomy, lumbar disectomy, lumbar spinal fusion, right knee reconstruction, one knee arthroplasty. Medications include Zantac, Enalapril, Voltaren, Zolofit, Lortab.

Musculoskeletal Exam: Bilateral lower paraspinal muscle tenderness, positive straight leg raising on left, severely reduced flexion, severely reduced extension, moderately reduced extension, severely reduced rotations bilaterally stable. Normal strength and tone. Neurologic: deep tendon reflexes 2+/4+ and symmetrical. No Babinski or clonus. Sensation normal to touch, pinprick and vibrations. Grossly normal exam and there is no significant reason not to proceed to surgery. [REDACTED], MD. [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

20 CFR 416.994B(1)((i) *Medical improvement*. Medical improvement is any decrease in the medical severity of your impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled. A determination that there has been a decrease in medical severity must be based on changes (improvement) in the symptoms, signs and/or laboratory findings associated with your impairment(s) (see §416.928).

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 2000. 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 after three back surgeries, right and left knee dysfunction and mobilization problems with depression. 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 severe loss of function. The medical records do support some loss of function under 1.00Ba of left lower extremities and use of a walker, which caused a partially flexed position. But the Claimant was to undergo another back surgery. See finding of fact 8. But there were no medical records submitted detailing the type of surgery or the medical need for the surgery.

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 hypertension which the medical records have not established end organ damage. See finding of fact 8.

The Claimant' past work was factory type. At hearing the Claimant testified to not being able to return to factory type work due to inability to sit long. [REDACTED] noted some severe to moderate problems in range of motion of the bilateral lower legs. There is also the new back surgery. Based on this medical information, the undersigned finds the Claimant cannot return to past relevant work and other work at the present time.

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

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 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 "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 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 November 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**; in November 2009. [Emphasis added.]

/s/

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

Date Signed: 05/14/09

Date Mailed: 05/15/09

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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