

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.: 2008-10674

Issue No.: 2009, 4031

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

April 23, 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 23, 2008. The Claimant appeared at the Department of Human Service (Department) in Calhoun County.

The record was left open to obtain additional medical information. An Interim Order was issued for additional medical records; and new medical records were reviewed by the State Hearing Review Team (SHRT) and the application was denied. This 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) program and State Disability Assistance (SDA) 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) The Claimant filed an application for re-determination of eligibility for MA-P and SDA on August 8, 2007; after benefits were granted for onset date of June 2006.
- (2) On October 18, 2007 the Department denied the re-determination; and on February 11, 2009 the SHRT guided by Vocational Rule 203.28 denied the re-determination application because medical records indicated a capacity to perform other medium work.
- (3) On October 24, 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 was thirty-seven years of age for the time period at issue.
- (5) Claimant completed grade 12 and three years of college; and can read and write English and perform basic math.
- (6) Claimant last worked in February 2006 running mills/lathes, plastic mod machine; and worked at [REDACTED] as manager/driver.
- (7) Claimant has alleged a medical history of a [REDACTED] determination of cervical problems causing neck, shoulder pain with numbness, tingling and physical therapy and depression with Prozac prescribed.
- (8) [REDACTED], in part:

[REDACTED] HISTORY: C/O neck and shoulder pain since work injury [REDACTED]. Has testing with normal left shoulder MRI, cervical MRI showed left posterior disc osteophytes at C5-C6 and C6-C7 with central canal stenosis and proximal left forminal narrowing

ASSESSMENT/PLAN: Differential is RSD, thoracic outlet, brachial injury, non-sympathetic related pain syndrome. Suggest conservative treatment until diagnosis is confirmed. Referred to [REDACTED] for Electroneuromyography.

CURRENT DIAGNOSIS: Chronic neck-shoulder pain with neuropathy.

WT: 196, BP 120/82

NORMAL EXAMINATION AREAS: General.

FINDINGS: Musculoskeletal: very guarded range of motion and transfer

CLINICAL IMPRESSION: Stable. Can meet own need at home. Medications: Neurotin, Norco, Nicotine patch, Amitriptyline. Medical needs: Ambulatory, no special transportation needed or does not need accompaniment. Can work at usual occupation or any occupation in one month. [September 2007.] [REDACTED]

Electroneuromyography Report: Left upper extremities including proximal conduction were normal. Needle examination of multiple muscles left upper arm demonstrates no abnormal spontaneous activity and normal voluntary motor units. Complete neurological exam, muscle tone exam, muscle strength, sensation, Cranial nerves, coordination of the legs and right arm and gait: [All normal.] Except: some pain limitations and decreased perception of pinprick in left arm compared to right.

There was no electrodiagnostic evidence of left upper extremity radiculopathy, plexopathy or mononeuropathy. [REDACTED]. Department Exhibit (DE) 1, pp. 169-171 and 159-166.

(9) [REDACTED] in part:

[REDACTED] CURRENT DIAGNOSIS: Chronic left neck-shoulder pain. Neuropathy upper extremity. GERD. Depression. Nausea, Tooth pain.

HT: 67", WT: 194, BP 120/74.

NORMAL EXAMINATION AREAS: General; HEENT; Respiratory; Cardiovascular, Neuro.

FINDINGS: two molars broke-cracked. Depressive symptoms.

CLINICAL IMPRESSION: Stable.

PHYSICAL LIMITATIONS: Limited, expected to last over 90 days; Lifting/carrying right arm up to 10 pounds 2/3 of 8 hour day; left arm no lifting; stand and/or walk about 6 hours in 8 hour day; sit about 6 hours in 8 hour day; no assistive devices are needed; use of right hand/arms for simple grasping, reaching, pushing/pulling, fine manipulating, use of both feet/legs for operating controls. Can meet own need in home. MENTAL LIMITATIONS: None. Medications Phenergan, Prozac, Colace, Noroc, Amitriptylin, Topamat, Neurotin, Prilosec, Nicotine patch. [REDACTED]. DE N, pp. 2-3

[REDACTED] C/O intense left shoulder pain. Went to PT for one session in [REDACTED] MRI cervical spine showed DJD at C5-C6 and C6-C7 and left foraminal stenosis at both levels. No surgery since injury. Walks steps, literate and holding many certifications in law enforcement, accounting and marketing, data processing, date entry and traffic control. ADL independent. PHYSICAL EXAMINATION: General, Head, Eyes, Ears, Neck, Chest, Heart, Abdomen, Musculoskeletal, Neuromuscular, Range of motion, Gait/Station, heel/toe walk, step climb, Squat: [All within normal limits.] Except: unable to cooperate with left arm exercises. Pain to palpation left bicipital groove left humeral head, limit to 40 degrees left arm forward flexion and abduction. Left shoulder girdle did not show bony changes suggestive of ligament damage or dislocation.

OBSERVATION: Given grime and calluses and nail biting on left hand it is obvious he uses left arm/hand in some activities. Able to manage driving truck to appointment and presumed he uses left hand to drive. No signs of radiculopathy, no atrophy of left arm muscles. Pain is consistent with bicipital tendonitis. Able to left 10 pounds with left hand. Uses deodorant under left armpit thus can lift arm. Needs PT. [REDACTED]. DE N, pp. 6-10.

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 that he did not perform 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 (6thCir 1985)

In this case, the Claimant has presented sufficient medical evidence to support some physical limitations. The medical evidence has established that Claimant has a physical impairment that has more than a minimal effect on basic work activities. The Claimant’s medical records do not document mental impairments or any other physical impairment that effect basic work activities from August 2007 and subsequent. See finding of facts 8-9.

In July 2006, the Claimant was granted benefits based on a meeting of Appendix 1 of Subpart P of 20 CFR, Part 404 Listing 1.04A. In this re-determination, the undersigned will evaluate the medical records submitted for August 2007 and subsequent to determine whether the Claimant’s disability continues under 20 CFR 416.994.

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 "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 reviewing Listing 1.04A *Disorders of the Spine with evidence of nerve root compression characterized by neuro-anatomic distribution of pain; limitations of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss.* [Emphasis added.]

There was no medical evidence of nerve root compression, there was no motor loss or muscle weakness found in the right upper extremity or bilateral lower extremities; and according to the clinical exam of [REDACTED], these symptoms were not present in the left upper extremity in [REDACTED]. Finally there were no earlier medical records establishing these symptoms. The complaints of pain, as pointed out by [REDACTED], may have been exaggerated.

See finding of facts 8-9

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 Listing 1.04A. 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 left shoulder pain. [REDACTED] set out their clinical examinations and do not completely limit the Claimant ability to physically function at SGA. [REDACTED] opined the Claimant could return to past relevant work or any other work by September 2007. [REDACTED] [REDACTED] observed the condition of the Claimant's left hand as dirty and calloused with bitten nails and observed the Claimant was able to drive his truck to the appointment which meant use of both right and left hands/arms. All the medical records have been reviewed; and the undersigned decides the medical evidence establishes an ability to return to past relevant work. But even under the final step the Claimant is not disabled.

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 thirty-seven 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 or more; 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 program.

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: 04/15/09

Date Mailed: 04/15/09

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

2008-10674/JRE

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.

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