

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. 2008-15294

Issue No. 2009, 4031

Case No: ██████████

Load No. ██████████

Hearing Date:

June 18, 2008

DHS County:

Wayne County/Dis ██████████

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 June 18, 2008. The Claimant and his representative ██████████ appeared at the Department of Human Service (Department) in Wayne County ██████████.

The closure date was waived to obtain additional medical information. The medical information was submitted to 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), retroactive 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) On October 15, 2007 the Claimant applied for MA-P and SDA.
- (2) On November 6, 2007 the Department denied the application: and on February 11, 2009 the SHRT denied the applications finding a lack of duration per 20 CFR 416.909.
- (3) On February 5, 2008 the Claimant filed a hearing request to protest the Department's determination.
- (4) Claimant's date of birth is [REDACTED]; and the Claimant is fifty-one years of age.
- (5) Claimant completed grade 10; and can read and write English and perform basic math.
- (6) Claimant last worked in 2005 providing oil changing services, and previously in janitorial services for short time.
- (7) Claimant has alleged a medical history of insulin dependent diabetes mellitus (IDDM) back, right arm, hip, and leg pain and dysfunction; pancreatitis, pneumonia, liver injury, untreated decreased memory, depression, anxiety, confusion, visual and auditory hallucinations; and disorientations
- (8) [REDACTED], in part:

HISTORY/HOSPITAL COURSE: Admitted with severe abdominal pain and acute pancreatitis, mild metabolic acidosis and he stated had been taking large amount of Tylenol and drinking alcohol. Had acute GI bleed secondary to Mallory-Weiss tear. And developed resistant staphylococcus infection, aspiration pneumonia and hepatic encephalopathy and slight esophageal fistula. All consultants evaluated and agreed he could be safely discharged; and he understands he needs close medical follow up. Medications: lactulose, Viokase, folic acid, Zantac, albuterol inhaler, Bactrim DS. To see [REDACTED] and [REDACTED]. Cavitory lesion and opacities at lung bases, right renal calculus and biliary ductal dilation will be followed as outpatient. All medications for one month were given to him. [REDACTED] Department Exhibit (DE) 1, pp. 16-19.

CURRENT DIAGNOSIS: Hyposodium, acute liver injury, acute or chronic pancreatitis, upper GI bleed secondary to Mallory-Weiss tear S/P clipping, leukocytosis, jaundice.
HT 69", WT 63.5kg, BP 99/59.

NORMAL EXAMINATION AREAS: Cardiovascular, Musculoskeletal, Neuro, Mental.

FINDINGS: General: jaundice. HEENT: subconjunctival hemorrhages, yellow sclera. Respiratory: Minor basilar crackles, left greater than right. Abdominal: right upper/lower quadrant tenderness.

CLINICAL IMPRESSION: Stable.

PHYSICAL LIMITATIONS: Limited; and not expected to last over 90 days; Lifting/carrying up to 10 pounds 1/3 of 8 hour day; no medical necessity for walking assistance; use of both hand/arms for simple grasping, reaching, pushing/pulling, fine manipulating; use of both feet/legs for operating foot controls. Can meet own needs in home. MENTAL LIMITATIONS: comprehension, sustained concentration and memory due to hepatic encephalopathy from chronic pancreatitis. Medications: as above with folic acid, protonix, vitamin B, Theragra, vancomycin, glace, ultram, robitussin. [REDACTED]. DE 1, pp. 14-15.

(9) [REDACTED], in part:

Admission/Discharge: Diabetic ketoacidosis with pancreatitis, history of alcohol abuse, tobacco abuse and diabetic neuropathy. Transferred to ICU. Physical Examination: [All within normal limits,] Except loss of feeling/weakness in lower extremities worse toward feet. EKG normal. Urine drug screen negative. CAT scan brain negative. Chest X-ray negative. Recovered quickly on IV insulin and was discharged with medication samples. Home situation is unstable and less than ideal. Discharged and can follow with me. [REDACTED] Claimant Exhibit A, pp. 1-16.

(10) [REDACTED], in part:

[REDACTED] Eye Examination: Neuro/Cognitive: Judgment appropriate, orientated, normal memory, mood and affect appropriate. Right eye: 20/100, Left eye 20/200. No diabetic retinopathy of either right or left eye. Complains of difficulty with night driving. Patient elects to have glasses to improve vision. IOPs within normal limits presently. Return one year. [REDACTED]. Claimant Exhibit C, pp. 1-4

[REDACTED] Follow up office visit: Constitutional, Eyes, Ent/Mouth, Neck, CV, Resp, Integument, Musculoskeletal, GI, Neurologic, Psychiatric, Allergic/Immun, Hemat/Lymph: [All within normal limits.] No changes: PMH, FH, SH, ALLERGY. Alc: good, better. Medications: Humulin. WT 176, BP 120/80. Blood sugar: overall good. Continue current treatment for DM, Hypoglycemia, and HTN. Work on diet and exercise. Labs ordered. Return in 3 months. [REDACTED]. Claimant Exhibit B, pp. 1-3

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 2005. 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 medical evidence to support a finding that Claimant has physical limitations that are more than minimal and impact basic work activities. The medical evidence has established that Claimant has physical limitations have more than a minimal effect on basic work activities. The Claimant’s physical impairments of lower extremity weakness and loss of sensation are expected to last a lifetime. See finding of fact 8-10.

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 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.

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 11.04 *Peripheral Neuropathies*. As of [REDACTED], no medical records established loss of ambulation or upper or lower extremity dysfunction. [REDACTED] has been treating the claimant at this time; and the doctor's does not establish physical limitations due to diabetic peripheral neuropathies. [REDACTED]. [REDACTED] examined the Claimant's eyes and did not find retinopathy due to diabetes. The doctor did write the Claimant was complaining of night time driving vision but elected to have glasses for improvement. The medical records did not establish memory impairment. See finding of fact 10.

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 of a lack of medical records establishing present marked and severe physical limitations. 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 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 normal for all body systems except the weakness of lower extremities and loss of sensation. Past relevant work to 2005 oil change services and janitorial. In [REDACTED] limited lifting to less than 10 pounds but the doctor expected these limitations to last less than 90 days. Thus this limit is not relevant to periods up to [REDACTED]. But the Claimant testified at hearing he could not return to past relevant work. The undersigned decides 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).

Up to [REDACTED], there were no medical records that established the Claimant abilities to physically function. The undersigned notes the Claimant claim of driving with poor night time vision. Thus, 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 light work. Appendix 2 to Subpart P of Part 404—
Medical-Vocational Guidelines 20 CFR 416.969:

202.00 *Maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s)*. (a) The functional capacity to perform a full range of light work includes the functional capacity to perform sedentary as well as light work. Approximately 1,600 separate sedentary and light unskilled occupations can be identified

in eight broad occupational categories, each occupation representing numerous jobs in the national economy. These jobs can be performed after a short demonstration or within 30 days, and do not require special skills or experience.

(b) The functional capacity to perform a wide or full range of light work represents substantial work capability compatible with making a work adjustment to substantial numbers of unskilled jobs and, thus, generally provides sufficient occupational mobility even for severely impaired individuals who are not of advanced age and have sufficient educational competences for unskilled work.

(c) However, for individuals of advanced age who can no longer perform vocationally relevant past work and who have a history of unskilled work experience, or who have only skills that are not readily transferable to a significant range of semi-skilled or skilled work that is within the individual's functional capacity, or who have no work experience, the limitations in vocational adaptability represented by functional restriction to light work warrant a finding of disabled. Ordinarily, even a high school education or more which was completed in the remote past will have little positive impact on effecting a vocational adjustment unless relevant work experience reflects use of such education.

(d) Where the same factors in paragraph (c) of this section regarding education and work experience are present, but where age, though not advanced, is a factor which significantly limits vocational adaptability (*i.e.*, closely approaching advanced age, 50-54) and an individual's vocational scope is further significantly limited by illiteracy or inability to communicate in English, a finding of disabled is warranted.

Claimant at fifty-one is considered *approaching advanced age*; a category of individuals age 50-54. Under Appendix 2 to Subpart P: Table No. 1—Residual Functional Capacity: Maximum Sustained Work Capability Limited to Light Work as a Result of Severe Medically Determinable Impairment(s), Rule 202.10, for approaching advanced age, age 50-54; education: limited or less—at least literate and able to communicate in English; previous work experience, unskilled or none; the Claimant is “not disabled” per Rule 202.10.

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 the State Disability 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: March 12, 2009

Date Mailed: March 23, 2009

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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