

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: 2008-16148
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 31, 2008
Macomb County DHS

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

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, an in person hearing was held on July 31, 2008. Claimant appeared and testified.

ISSUE

Whether the Department of Human Services (Department) properly determined that the Claimant is not "disabled" for purposes of the Medical Assistance (MA) program?

FINDINGS OF FACT

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

1. On November 9, 2007, the Claimant applied for MA-P and Retro MA.
2. On December 18, 2007, the Department denied the Claimant's application.
3. On March 3, 2008, the Claimant filed a request for hearing regarding the

Department's denial of benefits.

[REDACTED]

5. [REDACTED]

6. The Claimant's work history: landscaper.

7. The Claimant suffers with COPD, hernia, high blood pressure, knee pain, shortness of breath, chest pain, left side numbness, abdominal pain, black outs, fatigue.

8. The Claimant's limitations have lasted for 12 months or more.

9. [REDACTED]

10. The Claimant has significant limitations on physical activities involving sitting, standing, walking and lifting.

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 (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *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).

In order to receive MA benefits based upon disability or blindness, the claimant must be disabled or blind as defined in Title XVI of the Social Security Act (20 R 416.901). The Department, being authorized to make such disability determinations, utilizes the SSI definition of disability when making medical decisions on MA applications. MA-P (disability), also is known as Medicaid, which is a program designated to help public assistance claimants pay their medical expenses.

The law defines disability as the inability to do substantial gainful activity

(SGA) 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 CFR 416.905).

Because disability must be determined on the basis of medical evidence, Federal regulations have delineated a set order entailing a step sequential process for evaluating physical or mental impairments. When claimant is found either disabled or not disabled at any point in the process, the claimant is not considered further.

Addressing the following factors:

The first factor to be consider is whether the Claimant can perform Substantial Gainful Activity (SGA) defined in 20 CFR 416.920(b). In this case, the Claimant is not working. Therefore, the Claimant is not disqualified a this step in the evaluation.

The second step to be determined in considering whether the Claimant is considered disabled is whether the severity of the impairment. In order to qualify the impairment must be considered severe which is defined as an impairment which significantly limits an individual's physical or mental ability to perform basic work activities. Examples of these include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, 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).

In this case, the Claimant's medical evidence of record supports a finding that Claimant has significant physical and mental limitations upon Claimant's ability to perform basic work activities such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling in a routine work setting. Medical evidence has clearly established that the Claimant has an impairment (or combination of impairments) that has more than a minimal effect on the Claimant's work activities. See Social Security Rulings: 85-28, 88-13, and 82-63.

In the third step of the analysis, the trier of fact must determine if the Claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the Claimant's medical record will not support a finding that the Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR Part 404, Part A.

Accordingly, the Claimant cannot be found disabled based on medical evidence alone. 20 CFR 416.920(d).

Social Security Ruling 02-01 directs adjudicators to consider that the combined effects of obesity with other impairments may be greater than the non-obesity impairment alone [REDACTED]

[REDACTED]

obesity is considered [REDACTED] at Level III represents a condition which creates the greatest risk for developing obesity related impairments. The Claimant's weight [REDACTED]

[REDACTED]. The Claimant's obesity as measure by his BMI may be calculated using the

[REDACTED] calculation, found at:

http://cdc.gov/nccdphp/dnpa/bmi/adult_BMI/english_bmi_calculator/bmi_calculator.htm,

it is possible to calculate the Claimant's BMI. The formula for calculating BMI is as follows:

Calculate BMI by dividing weight in pounds by height in inches squared and multiplying by a conversion [REDACTED]

[REDACTED] of obesity surely impacts the Claimant's heart disease, hernia and knee pain.

Social Security Ruling SSR-02 provides in pertinent part:

Because there is no listing for obesity, we will find that an individual with obesity "meets" the requirements of a listing if he or she has another impairment that, by itself, meets the requirements of a listing. We will also find that a listing is met if there is an impairment that, in combination with obesity, meets the requirements of a listing. For example, obesity may increase the severity of coexisting or related impairments to the extent that the combination of impairments meets the requirements of a listing. This is especially true of musculoskeletal, respiratory, and cardiovascular impairments. It may also be true for other coexisting or related impairments, including mental disorders.

The fourth stage of the analysis to be considered is whether the Claimant has the ability to perform work previously performed by the Claimant within the past 15 years. The trier of fact must determine whether the impairment(s) presented prevent the Claimant from doing past relevant work. In the present case, the Claimant's prior work experience was as a landscaper. This position required extensive manual labor. The Claimant's current medical condition precludes him from that type of exertion. It was noted during the hearing the Claimant's arms were covered with bruises. The Claimant bruises extremely easy. In addition this Administrative Law Judge, finds based on the medical evidence and objective, physical, and psychological findings, that the Claimant is not capable of the physical required to perform any such position. 20 CFR 416.920(e). The medical records demonstrate this is more than a minimal impact on his abilities.

In the final step of the analysis, the trier of fact must determine: if the Claimant's impairment(s) prevent the Claimant from doing other work. 20 CFR 416.920(f). This determination is based upon the Claimant's:

1. residual functional capacity defined simply as "what can you still do despite your limitations? 20 CFR 416.945;
2. age, education, and work experience, 20 CFR 416.963-965; and
3. the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite her limitations. 20 CFR 416.966.

See *Felton v DSS*, 161 Mich. App 690, 696 (1987). Once the Claimant makes it to the final step of the analysis, the Claimant has already established a prima facie case of disability. *Richardson v Secretary of Health and Human Services*, 732 Fd2 962 (6th Cir, 1984). Moving forward the burden of proof rests with the state to prove by substantial evidence that the Claimant has the residual function capacity for substantial gainful activity.

Based on the medical evidence presented and Claimant's statements, this Administrative Law Judge finds that Claimant would be able to perform work on no more than a sedentary level. Claimant is an individual of advanced age. 20 CFR 416.963. Claimant's previous work has been unskilled. Federal Rule 20 CFR 404, Subpart P, Appendix 2 contains specific profiles for determining disability based on residual functional capacity and vocational profiles. Under Table 1, Rule 201.04 claimant is disabled for the purposes of the Medical Assistance programs.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Claimant is medically disabled as of October 2007.

Accordingly, the Department decision is hereby REVERSED and the Department is ORDERED to initiate a review of the application dated November 9, 2007, if not done previously, to determine Claimant's non-medical eligibility. The Department shall inform Claimant of the determination in writing. This case shall be reviewed in December 2009.

/s/

Jonathan W. Owens
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services


Date Signed: 12/23/08

Date Mailed: 01/06/09

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.

JWO

A large black rectangular redaction covers the signature area, obscuring the name and any handwritten notes or dates that might have been present.