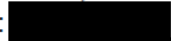
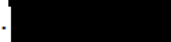


STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

 Claimant

Reg. No. 2008-16637
Issue No. 2009, 4031
Case No: 
Load No. 
Hearing Date:
September 15, 2008
DHS County:
Wayne County/District 35

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 September 15, 2008. The Claimant appeared at the Department of Human Service (Department)



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 (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 May 3, 2007 the Claimant applied for MA-P and SDA.
- (2) On February 19, 2008 the Department denied the application: and on November 24, 2008 the SHRT guided by Vocational Rule 203.33 denied the applications because the medical records evidenced a capacity to perform a wide range of medium work.
- (3) On March 5, 2008 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 fifty-two years of age.
- (5) Claimant completed grade 11 and GED and accounting education; and can read and write English and perform basic math.
- (6) Claimant last worked in October 2006 in the manufacture of auto parts for 32 years.
- (7) Claimant has alleged a medical history of breathing problems, chest pain with sweating, chest pressure, abdominal pain, hypertension, burning on the left side/arm and leg, passing involuntary urine' and denies mental impairments.
- (8) March 2007, in part:

HISTORY: On arrival to hospital, blood pressure was 300/160 with pulse 134 and no past medical treatment since childhood when told had breathing problems.

HOSPITAL: With medical intervention his BP improved to 189/134, respiratory status improved, chest X-ray showed diffuse wet crackles which respiratory status improved with medications by IV. Chest X-ray finding of congestive heart failure (CHF), negative for pulmonary embolus, questionable pleural based mass. EKG significant for LVH.

IMPRESSION: Well treated hypertensive emergency. Uncontrolled hypertension not currently symptomatic. Asthma, chronic bronchitis related to smoking or work exposures. Proteinuria. Chronic kidney disease, presently placing him in stage II chronic kidney disease.

Renal Ultrasound: Very small right parapelvic cyst less than 2cm. No hydronephrosis or other significant findings. **Electrocardiography:** Mild aortic stenosis. Left ventricular hypertrophy, Enlarged left atrium and right ventricle, left ventricular ejection fraction 35-40%. No pericardial effusion. Mild to moderate mitral and trace aortic, tricuspid and pulmonary regurgitation with pulmonary artery pressure of 30 mmHg. [REDACTED]
Department Exhibit (DE) 1, pp. 1-26. No discharge summary or discharge condition included.

(9) May 2007, in part:

CURRENT DIAGNOSIS: Heart failure, hypertension, asthma.

HT 66", WT 206, BP 206/130.

NORMAL EXAMINATION AREAS: General; HEENT; Respiratory; Abdominal, Musculoskeletal, Neuro, Mental.

FINDINGS: Respiratory: periodic episodes of wheezing. Cardiovascular: episodes of lower extremity edema.

CLINICAL IMPRESSION: Improving.

PHYSICAL LIMITATIONS: Limited, expected to last over 90 days; Lifting/carrying up to 10 pounds 1/3 of 8 hour day; stand and/or walk less than 2 hours in 8 hour day; no medical necessity for walking assistance; use of both hand/arms for simple grasping, reaching, fine manipulating; no pushing/pulling; use of both feet/legs for operating foot controls. Can meet own need in home. Symptomatic shortness of breath, excessive tiredness.

MENTAL LIMITATIONS: None. Medications: Lisinopril, Metoprolol, HCTZ, ASA, Advair.

MEDICAL NEEDS: Heart failure needs close monitoring for hypertension will last lifetime, Ambulatory, No past or other work for lifetime due to heart failure, excessive tiredness and symptomatic shortness of breath. [REDACTED]

[REDACTED] DE 1, pp. 5A-6.

(10) January and October 2008, in part:

January: INDEPENDENT MEDICAL EXAM: History: States taking medication for blood pressure, gets short of breath walking 1-2 blocks. C/O left arm/hand weakness but had no medical treatment.

PHYSICAL EXAMINATION: Alert, orientated x 3, well-developed and nourished, cooperative. BP 180/110, visual acuity without glasses 20/40 right and 20/100 left. HEENT, Respiratory, Cardiovascular, gastrointestinal, Extremities, Bones & Joints, Neurologic: [All within normal limits.] Except blood pressure elevated. No appreciable weakness of left arm/hand. [REDACTED] DE 1, pp. 30-36

October: INDEPENDENT MEDICAL EXAM: History: Has not followed up with cardiologist since 2007. States has chronic shortness of breath walking 1-2 blocks and chronic pedal edema. Chest pain 75% of time but has not followed up with ER treatment. Negative for joint, bones or muscle problems. Blood pressure today 220/150 and 210/132; states taking blood pressure medication

PHYSICAL EXAMINATION: Alert, orientated x 3, well-developed and nourished, cooperative. BP 180/110, pulse 96, respirations 16. Visual acuity with glasses 20/20 bilaterally. HEENT, Respiratory, Cardiovascular, Gastrointestinal, Extremities, Bones & Joints, Neurological: [All within normal limits.] Except blood pressure elevated; and lungs positive for expiratory and inspiratory wheezing scattered through lung bases. No appreciable weakness of left arm/hand.

Medical Source Statement: Able to lift and carry 10 pounds occasionally, stand or walk less than 2 hours in 8 hour day. Able to sit six hours in 8 hour day. Limitation on pushing/pulling with upper extremities based on obesity, Able to occasionally climb ramps and limited in climbing stairs related to congestive heart failure. Can occasionally balance, stoop, kneel, crouch, and crawl. No limitations on manipulations, visual or communications functions. Should avoid exposure to extreme heat or cold, and fumes, dust, gases, poor ventilation and odors, and hazardous heights and machinery. [REDACTED]

Chest X-ray: no active pulmonary disease.

Pulmonary Function Test: FVC—2.47; FEV1—1.88; height 64”, weight 208. Low vital capacity possible due to restriction of lung volumes.

EKG: incomplete bundle branch block. Left ventricular hypertrophy.

DE N, pp. 1-11

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 CFR 416.905

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 October 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 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 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 4.00 *Cardiovascular System*. The record did not contain appropriate medical cardiac testing result since March 2007; and as noted, the March 2007 medical records were incomplete, i.e. no established physical condition on discharge. As noted, the claimant did not follow up with a cardiologist or require ER treatment for the cardiovascular system. There were medical records establishing elevated blood pressure even though the Claimant testifies to taking the prescribed medications. But as noted, the Claimant did not follow up for treatment. 4.00B3a provides: if

you have not received ongoing treatment, we will base our evaluation on current medical evidence but we cannot show you meet the criteria of the listing.

In May 2007, [REDACTED] opined the Claimant was improving. The Claimant has had continued shortness of breath on an episodic basis. Appendix 1 of Subpart P of 20 CFR, Part 404: Listing 3.02: *Chronic pulmonary insufficiency* provides meeting the listing when FEV1 is 1.25; and FVC is 1.45 at 64-65.” 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 limitations in cardiovascular functioning. 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 shortness of breath and cardiac problems. Past relevant work was basically machine operator. Based on [REDACTED] [REDACTED] opinion after examining the Claimant in October 2008, 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).

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 because of [REDACTED] opinion. 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 fifty-two is considered *closely 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 Sedentary Work as a Result of Severe Medically Determinable Impairment(s), Rule 201.10, for individuals, age 50-54 when age is a less advantage factor for making an adjustment to other work; education: limited or less; previous work experience, skilled or semiskilled—skills not transferable; the Claimant is “disabled” per Rule 201.10.

It is the finding of the undersigned, based upon the medical data and hearing record that Claimant is “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 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 program and the State Disability Program.

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

Accordingly, The Department is ORDERED to initiate a review of the May 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 February 2010.

/s/

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

Date Signed: March 3, 2009

Date Mailed: March 5, 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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