

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.: 2008-17435
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
November 12, 2008
Kent County DHS

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 November 12, 2006. The Claimant appeared at the Department of Human Service (Department) in Kent County.

The closure date was waived to obtain additional medical information. An Interim Order was issued to obtain new medical records but the records were not submitted. The record closed. 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 for the months of October, November and December 2007 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) On January 22, 2008 the Claimant applied for MA-P.
- (2) On March 18, 2008 the Department denied the application but granted SDA; and on June 18, 2008 the SHRT denied the application finding medical evidence failed to support disability for the duration of 12 months per 20 CFR 416.909.
- (3) On March 27, 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-five years of age.
- (5) Claimant completed grade 12 and one and one-half years of college; and can read and write English and perform basic math.
- (6) Claimant currently works part-time as a telemarketer 24 hours per week for [REDACTED] per hour; and last worked full time in 2006 doing packing and custodial work with prior work of acting manager, retail selling, church maintenance, and manufacturing supervisor for [REDACTED] and was a golf professional for [REDACTED] years.
- (7) Claimant has alleged a medical history of necrosis of left hip, hypertension and major depression.
- (8) June and August 2008, in part:

General Observations: Came alone with good hygiene, cooperative and emotionally stable. History of depression with anger. And depression is related to health problems and history of alcoholism. Current treatment Buspar, Nuerontin, Celexa. Outpatient counseling at [REDACTED]. Mental Status Examination: [completely illegible.] Mental Residual Functional Capacity: Moderately limited in understanding and remembering detailed instructions. [REDACTED] (sic) LCSW. Department Exhibit (DE) 1, pp. 697-694

CURRENT DIAGNOSIS: Right ceramic total hip replacement.

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

FINDINGS: Musculoskeletal: decreased range of motion.

CLINICAL IMPRESSION: Deteriorating.

PHYSICAL LIMITATIONS: Limited, expected to last over 90 days; Lifting/carrying up to 25 pounds 1/3 of 8 hour day; stand and/or walk less than 2 hours in 8 hour day; sit about 6 hours in 8 hour day; use of both hand/arms for simple grasping, reaching, pushing/pulling, fine manipulating; No use of either feet/legs for operating controls. Can meet own need in home.

Can return to work [REDACTED] with limitations of no bending, twisting, squatting. Must have sit/stand option. No stairs more than 7 repetively. No ladders. No climbing on equipment. Sedentary work only. [REDACTED], MD. DE 1, pp. 698-700.

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 performing SGA twenty-four hours per week for [REDACTED] per hour. This amount equals [REDACTED] monthly and does not equal SGA for 2008. 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 medical evidence of mental/physical limitations that are more than minimal and impact basic work activities. The impairments will last his lifetime. See finding of facts 8-9.

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 impairments are "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 medical evidence establishes right total hip replacement and mental health treatment with medications for history related to physical impairments and alcohol abuse.

The severity, intent and criteria of Appendix 1 of Subpart P of 20 CFR, Part 404, Listing 1.00 *Musculoskeletal system* and 12.00 *Mental Disorders* would be applicable to the facts here but the medical records do not establish the intent and severity of the listings above based on a review of severity according to 1.00Ba and 12.00C. These require a severe loss of function. The Claimant does not meet the severity based on the fact of [REDACTED] opinions of his ability to physically function; and [REDACTED] did not find any mental impairments. Although there was some memory limits in [REDACTED] but not severe. See finding of fact 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 the listings of Appendix 1 of Subpart P of 20 CFR, Part 404. 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 do establish [REDACTED] returned the Claimant to sedentary work with limitations on other physical movements as of [REDACTED]. The doctor opined these limits would last 90 days. Thus, 90 days is approximately [REDACTED] or [REDACTED]. The Claimant's current part-time work was telemarketing; and given the opinion of the doctor; the Claimant should be able to do this sedentary work full time. The undersigned finds the Claimant "not disabled" at step four. But even under step five, 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 totality of 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 based on [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-five is considered *advanced age*; a category of individuals age 55 and over. 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 201.07, for individuals of *advanced age*, over 55; education: high school graduate or more—does not provide for direct entry into skilled work; previous work experience, skilled or semi-skilled—skills transferable [golf professional knowledge with managerial skills]; the Claimant is “not disabled” per Rule 201.07.

It is the finding of the undersigned, based upon the medical data and hearing record that Claimant is “not disabled” at the fifth step.

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 based on 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: 05/12/09

Date Mailed: 05/12/09

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

cc:

