

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.: 2008-20277
Issue No.: 2009, 4031
Case No. [REDACTED]
Load No.: [REDACTED]
Hearing Date:
September 18, 2008
Saginaw 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 September 18, 2008. The Claimant appeared at the Department of Human Service (Department) in Saginaw 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 records 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 September, October and December 2007 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 December 17, 2007 the Claimant applied for MA-P and SDA.
- (2) On March 7, 2008 the Department denied the application: and on June 23, 2008 the SHRT guided by Vocational Rule 203.22 denied the application finding medical evidence for the ability to perform medium work.
- (3) On March 28, 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 can read and write English and perform basic math.
- (6) Claimant last worked full time in 2004 in carpentry and construction and a brief, unsuccessful work attempt in 2008.
- (7) Claimant has alleged a medical history of chronic lower back pain increased with exertion after a lumbar laminectomy in 2004, right hip sciatica, and arthritis and denies mental impairments but has a history of alcoholism.
- (8) June to November 2007, in part:

July: First office visit since 2005. Having back and left-side pain without radiation to leg. No numbness or parasthesias. Denies other neurologically symptomology. PHYSICIAN EXAMINATION: Awake, alert, no acute distress. Neck, Carotid pulses, Neurological, Cranial Nerves, Motor Strength, Motor Testing, Motor time, Sensory, Reflex, Deep tendon reflexes, Range of Motion, Straight Leg Raising: [All within normal limits.] Except some minimally tender lumbar area and limitations of range of motion lumbar spine. MRI showed degenerative changes with bulging disc at several locations. Left disc protrusion at L2-L3 with compression of left side of thecal sac with moderately significant. Recommend conservative approach. Only back symptoms with very little radiculopathy. [REDACTED], MD, FACS. Department Exhibit (DE) 1, p. 3

September: Follow up for degenerative disc disease doing well with this; and wants methadone refill. History of hypertension. Physical Examination: Alert and ambulatory and [within normal

limits.] Except slight tenderness low back area. Counseled about smoking cessation. [REDACTED], MD.

November: C/O addiction to methadone. Previously to heroin as well as probably opiates or Vicodin. Saw a specialist for back and told no surgery needed or any strong medication due to the results of the X-rays. Claims if runs out of methadone he will overdose on alcohol. Smokes cigarettes. Denies suicidal ideation. Ready for rehab. Physical Examination: [Within normal limits.] Patient is medically stable for detox program. [REDACTED]. DE 1, p. 8.

(9) January 2008, in part:

Here C/O chronic cough and wants to try smoking cessation program. Staying at transition house for rehabilitation of methadone addiction. Physical Examination: Alert, ambulatory, BP 140/80, Lungs are clear, Heart rate RRR. Discussed symptomatic treatment of viral bronchitis. Return to PCP for follow up. [REDACTED]. DE 1, p. 6.

X-ray Chest: IMPRESSION: Chronic obstructive pulmonary disease unchanged sine December 2007 but lings free of congestion, consolidation and atelectesus. [REDACTED], MD. DE 1, p. 52.

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 2004. 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 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 2007 medical evidence establishes lumbar impairments, hypertension and COPD with breathing problems; and substance abuse treatment program in [REDACTED] 2007. At hearing the Claimant testified to being sober from alcohol since November 2007. But there were medical records back to 2004 with serious heart findings. All present medical records did not establish any cardiovascular limitations. The medical records do establish this man has not been taking care of his health.

The severity, intent and criteria of Appendix 1 of Subpart P of 20 CFR, Part 404, Listings 3.00 *Respiratory system*; and Listing 1.00 *Musculoskeletal system* would be applicable to the facts here but the medical records do not establish the intent and severity of the listings above. The medical records appear to establish that substance abuse was the Claimant's major problem for the time period at issue; and this is not considered a disability.

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 lumbar impairments with pain. Also established was COPD but the Claimant, in spite of medical advice, is still smoking. There were no ambulation difficulties or upper/lower extremity limits in the medical records. But pain was a complaint and the appropriate medical testing established a causation for the pain. Given the nature of heavy construction work in the Claimant's work history, undersigned finds the Claimant cannot return to past work. Evaluation under step five will continue.

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 light work. See finding of facts 8-9. 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-five is considered *advanced age*; a category of individuals age 55 plus. 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 202.06, for advanced age, age 55 plus; education: high school graduate or more; previous work experience, skilled or semi skilled—skills not transferable; the Claimant is “disabled” per Rule 202.06.

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 return to other work 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 December 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 May 2010.

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

2008-20277/JRE

Date Signed: 05/11/09

Date Mailed: 05/11/09

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

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