

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.: 2008-20769
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
October 23, 2008
Gratiot 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 October 23, 2008. The Claimant, his mother and representative appeared at the Department of Human Service (Department) in Gratiot County.

The record was left open 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 for time periods April 2008 to August 2008. The Claimant returned to substantial gainful activity in September 2008.

ISSUE

Whether the Department properly determined the Claimant is "not disabled" for purposes of Medical Assistance based on disability (MA-P) 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) The Claimant' benefits for MA-P were re-determined in April 2008.
- (2) In May 2008 the Department denied the application; and on March 21, 2009 the SHRT denied the application finding the medical records indicated a capacity to perform light work because the impairment has medical improvement since March 2008
- (3) On May 21, 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 thirty-seven years of age.
- (5) Claimant completed grade 12; and can read and write English and perform basic math.
- (6) Claimant currently works beginning in September 2008 earning \$7.50 for 30 hours per week but was unemployed from April 2008 to August 2008.
- (7) Claimant has alleged a medical history of neurological impairments due to meningitis in 2005 with headache every day and fatigue and low back pain beginning in March 2008 with surgery and memory impairments.
- (8) March 2008, in part:

C/O severe low back pain and right hip pain after splitting wood with a three pound sledge hammer at the home of his mother. Currently using crutches. Past history includes chronic low back pain, neck pain, myofacial pain syndrome, fatigue, depression, migraines and insomnia. Weight 243. Vital Signs, HEENT, Chest, Musculoskeletal, Neurological: [all within normal limits.] Except: Severe low back pain in lifting both lower extremities.

Comes in today for first post-op visit status post microdisectomy. Great relief form surgery and walked one-half mile yesterday. Doing excellently. On 5 pound weight restriction for six weeks. Cautioned on bending, twisting or torquing at waist. [REDACTED], LPN, [REDACTED], MD.
- (9) August 2008, in part:

Presents today and had played golf and complains of pain in back. X-rays were reviewed and there was not a significant compression or misalignment. But will get MRI.

MRI LUMBAR SPINE, Vertebral bodies are aligned normally. Enhancement most likely granulation tissue. No disc fragment is identified. Normal bone marrow. No significant spinal cord stenosis. Discs are intact. Conus medullaris of spinal cord is normal in appearance. [REDACTED], MD.

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 beginning in September 2008. The Claimant is disqualified for MA at step one in the evaluation process for the time period effective September 2008.

The Claimant earns approximately \$967 per month [$\7.50×30 hours per week equals $\$225 \times 4.3$ equals $\$967$ per month] SGA in 2008 was \$940 per month and the Claimant is in excess of this amount. But evaluations for time periods April 2008 to August 2008 remain; and the Claimant was not performing SGA according to his testimony.

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 of low back pain beginning in [REDACTED] with surgical repair shortly afterwards. It is noted that the Claimant's physical condition, [Before Surgery] in [REDACTED], was so good that he could split wood with a sledge hammer. See finding of fact 8.

Under Appendix 1 of Subpart P of 20 CFR, Part 404, there was no medical records that supported loss of function according to 1.00C; severe low of function of the *Musculoskeletal System* Listing 1.00. The Claimant was golfing in August 2008.

After the [REDACTED] surgery, there was medical improvement. There were no medical records that the Claimant's impairments for which benefits were originally granted in April 2007, were related to chronic back pain requiring surgery. MRI in [REDACTED] did not establish anything but degenerative disc disease without stenosis or spinal cord compression. The event requiring surgery was a new injury. The medical records do not establish neurological impairments. The physical and mental and neurological functions must be intact to split wood with a sledge hammer. 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. 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

Date Mailed: 05/13/09

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:

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