

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.: 2008-21808
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
October 1, 2008
Cass 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 1, 2008. The Claimant and his mother appeared at the Department of Human Service (Department) in Cass County.

The record was left open to obtain additional medical information. The State Hearing Review Team (SHRT) reviewed the new records 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 based on disability (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) The Claimant filed an application for MA-P and SDA September 25, 2007.
- (2) On April 30, 2008 the Department denied the application; and on March 19, 2008 the SHRT guided by Vocational Rule 201.28 denied the application because medical records indicated a capacity to perform sedentary semi-skilled work.
- (3) On May 22, 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 forty-eight years of age.
- (5) Claimant completed grade 12; and can read and write English and perform basic math.
- (6) Claimant last worked in 2001 as a painter for 30 years.
- (7) Claimant has alleged a medical history of back surgery turned bad and affecting right and left legs, cervical disc, right elbow pain, left bicep muscle torn, hypertension, breathing problems, bipolar disorder, history of drug and alcohol abuse with sobriety four years.
- (8) February, March and June 2008, in part:

February: Pulmonary Function Test results: Pre-med: moderate obstructive and low vital capacity. Post Med: normal with FVC 3.39; FEV1 2.56. DE 1, pp. 11-114.

March: INDEPENDENT MEDICAL CONSULTATION: Can sit for one to two hours, has difficulty with repetitive bending, difficult to go on long car trips. Has given up racing motorcycles. Reports dyspneic [Short of breath] when walking quickly for 200 feet. No hospitalizations or ER visits for this problem Uses inhaler.

PHYSICAL EXAMINATION: Cooperative, hearing good, walks with limping gait. No assistive device used. No end organ damage from hypertension. Vital Signs, Visual Acuity. Skin, Neck, Chest, Heart, Abdomen, Vascular, Musculoskeletal, Neuro: [All within normal limits.] Except: lungs with mildly diminished breath sounds and mild prolonged expiratory phase. Minor range of motion limits dorsolumbar spine with tenderness of movement. No reflex diminution, motor weakness or sensory loss to suggest

ongoing nerve root impingement. Station was stable. [REDACTED]
[REDACTED]

June: MRI cervical spine: IMPRESSION: Left C5-C6 forminal disk herniation with probable exiting nerve compression. Moderate cervical spondylosis at C4-C5 and C6-C7. Mild C3 anterolisthesis secondary to hypertropic facet arthropathy and laxity, greater on right. [REDACTED] Department Exhibit 1, pp. 123-126.

(9) July 2008, in part:

Pain for two months. Seen for evaluation of MRI results: Showed moderate to marked foraminal stenosis due to left sided disc at C5-C6 level. [REDACTED] is not effective.. Has not had physical therapy for this problem. History includes chronic low back pain with lumbar laminectomy, COPD, hypertension, depression, bipolar disorder, obstructive sleep apnea and ruptures left bicep tendon. Drinks 18 beers a week, smoking cigarettes for 30 years. Medications include [REDACTED]
[REDACTED]

After physical examination showing left hand grasp and finger weakness, absent deep tendon reflexes left biceps, complaint of neck pain in extension and left rotations; IMPRESSION: Acute left C6 radiculopathy due to herniated disc at C5-C6 level producing significant pain, weakness and numbness left upper extremity. RECOMMEND: neurological examination, believe physical therapy would be helpful due to severity of symptoms and given [REDACTED] dose pack to provide partial relief. [REDACTED]. DE 1, pp. 128-129.

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 has not performed SGA since 2001. 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 (6th Cir 1985).

In this case, the Claimant has presented sufficient medical evidence to support physical limitations. The medical evidence has established that Claimant has a physical impairment that has more than a minimal effect on basic work activities and Claimant’s impairments are expected to last. There was no medical evidence of mental limitations that prevent basic work activities. The Claimant was diagnosed with bipolar disorder but has not been in treatment for mental disabilities. See finding of fact 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 physical 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.

The Claimant has musculoskeletal impairments with some decreased range of motion of cervical and lumbar spine with pain. The Claimant's hypertension is under control and [REDACTED] did not find any end organ damage due to hypertension. The medical records establish breathing problems.

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 1.00 *Musculoskeletal System* which requires a severe loss of function. The medical records do support a severe loss of function under 1.00Ba of either upper or lower extremities according to the physical evaluation by [REDACTED].

There was no medical evidence of impingement of the spinal cord but possibly some nerve root compression. This was not confirmed in the medical records. But the doctor opined that other treatment such as physical therapy should be tried.

Under Appendix 1 of Subpart P of 20 CFR, Part 404, Listing 3.02 B and A, the Claimant does not meet the listing due to the results of the pulmonary function test which do not establish the criteria of the listing. 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. 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 were essentially normal for most body systems except the physical limitations of the musculoskeletal system and breathing problems. See finding of fact 8-9. Based on the above established medical finds the undersigned decides the Claimant cannot return to past relevant work of painting.

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. 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 forty-eight is considered a *younger individual*; a category of individuals age 45-49. 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 201.21, for younger individual, age 45-49; education: high school graduate; previous work experience, skilled or semi-skilled—skills not transferable; the Claimant is “not disabled” per Rule 201.21.

It is the finding of the undersigned, based upon the medical data and hearing record that Claimant is “not 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 insufficient 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 "not 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 "not disabled" for purposes of the Medical Assistance based on disability and State Disability Assistance programs.

/s/

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

Date Signed: 05/06/09

Date Mailed: 05/06/09

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.

JRE/jlg

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