

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: 2008-24514
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 15, 2008
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Rhonda P. Craig

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, an in-person hearing was held on October 15, 2008. Claimant was represented at the hearing by [REDACTED]

ISSUE

Is claimant disabled for the purposes of the Medical Assistance and State Disability Assistance 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) Claimant applied for Medical Assistance and State Disability Assistance benefits on October 29, 2007. Claimant requested Medical Assistance retroactive to July 2007.

(2) Claimant's impairments have been medically diagnosed as uncontrolled hypertension, lumbar radiculopathy, left hand deformity, depression, status-post right leg surgery, acute cardiovascular accident [REDACTED] cervical and lumbar herniation, intracranial bleed [REDACTED], atherosclerotic disease, arthritis (spine), and left arterial occlusion.

(3) Claimant's physical symptoms are constant severe pain in the back and right hip, swelling in the feet (daily), severe headaches (daily), severe dizzy spells (daily), numbness in the hands and feet and weakness in the muscles.

(4) Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.

(5) Claimant is 47 years of age.

(6) Claimant has a high school education completed in [REDACTED] Claimant is able to read and write some English.

(7) Claimant has employment experience as a worker in an auto body shop, a truck deliverer and cable installer.

(8) Claimant has significant limitations on physical activities involving sitting (no more than 10 minutes at a time), standing (no more than 10 minutes at a time), walking (no more than 2 blocks at a time), bending, lifting, and stooping. Claimant has difficulty gripping and grasping with his left hand. He has a limited range of motion in his left hand and arm, right leg and back. Claimant has used a cane for 1 ½ years. He cannot walk without one.

(9) The department found that claimant was not disabled and denied claimant's application on May 8, 2008.

(10) New medical evidence (marked new in the file) was received and entered after the hearing. It was submitted to the State Hearing Review Team for reconsideration. The State Hearing Review Team again determined that claimant was not disabled for the programs.

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 400.10, *et seq.*, and MCL 400.105; MSA 16.490(15). Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *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).

The Department of Human Services conforms to state statute in administering the State Disability Assistance program.

2000 PA 294, Sec. 604, of the statute states:

Sec. 604. (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempted from the supplemental security income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

- (a) A recipient of supplemental security income, social security, or medical assistance due to disability or 65 years of age or older.

- (b) A person with a physical or mental impairment which meets federal supplemental security income disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...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

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

Here, claimant's impairment or combination of impairments is severe but does not meet nor is it the equivalent of a listed impairment. Claimant is also unable to do past work. Therefore, the determination of disability will be based on claimant's residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

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. 20 CFR 416.967(a).

Claimant's impairments and limitations have a major effect upon claimant's ability to perform basic work activities. Claimant is unable to perform the full range of activities for even sedentary work as defined in 20 CFR 416.967(a) because of the nature of the limitations. The total impact caused by the combination of medical problems suffered by the claimant must be considered. The combination of claimant's impairments result in a severe impairment which limits claimant's ability to work. 20 CFR 404.1529.

In the present case, the claimant has a number of serious medical conditions which severely affect his ability to perform all basic work activity. Claimant has cervical and lumbar disc herniations. An MRI of claimant's spine revealed that claimant has multi-level degenerative changes with minimal cord flattening at the C5-C6 level. Claimant's physician indicated in a record dated [REDACTED], that claimant has decreased sensation in both his legs and tenderness in his neck and lumbar spine. The physician noted that claimant could stand for less than 2 hours within an 8-hour day and sit for less than 6 hours within an 8-hour day. The claimant was unable to use either hand for reaching and pushing/pulling for repetitive actions. He was also unable to operate leg controls with either foot for repetitive actions. The physician indicated that claimant's condition was deteriorating. In [REDACTED], claimant had an acute cerebral vascular accident. A hospital report during that time indicates that an MRI of the brain showed abnormal linear enhancement within left posterior temporal occipital region likely due to petechial hemorrhage and edema. A CT scan of the head upon admission showed a petechial-like hemorrhage located on the left temporal parietal junction. Claimant had symptoms of gait instability, balance instability, lower extremity shaking and dizziness. In a CT of claimant's right hip performed in [REDACTED], claimant had degenerative subchondral cysts and degenerative changes of the right hip. He had evidence of previous internal fixation of the right femoral neck with degenerative changes/spurring of the right femoral head. A CT scan completed in [REDACTED] [REDACTED] indicates that claimant had disc herniations at L1-L3, L3-L4, L4-L5, and L5-S1. The report indicated claimant had mild acquired spinal stenosis at L2-L3. In a treating physician report, dated [REDACTED], the physician indicated that claimant's hypertension was uncontrolled and cited claimant's history of the cerebral vascular accident and his cervical lumbar disc herniations. The physician further noted claimant's deformity in the left hand. He indicated that claimant would not be able to do any standing, walking or sitting during an 8-hour

day, would not be able to use either hand for pushing and pulling or fine manipulation, and would only be able to use his left hand for simple grasping and reaching on a repetitive basis. He indicated that claimant could not use either foot for operating leg controls. Subsequent to the hearing, claimant underwent an examination. In a report dated [REDACTED], the physician noted that claimant had a left arterial occlusion, atherosclerotic disease, hypertension, hypercholesterol, and chronic pain. He indicated claimant has an abnormal gait due to pain in the lower legs. He indicated that claimant could not lift any amount of weight and could only sit 2 hours within an 8-hour day and walk and stand for less than 2 hours within an 8-hour day. He also indicated that claimant's condition was deteriorating. He indicated that claimant would not be able to use either hand or arm for simple grasping, reaching, pushing/pulling, and fine manipulation, or use either leg or foot for operating leg or foot controls on a repetitive basis. He indicated that due to the femoral artery occlusion which causes chronic pain, claimant is unable to walk for 50 feet without resting. This Administrative Law Judge, based upon the voluminous medical evidence and claimant's testimony regarding his limitations finds that claimant would be unable to perform the full range of activities for even sedentary work. *Wages v Sec of HHS*, 755 F2d (6th Cir 1985). Claimant is therefore disabled for the purposes of the Medical Assistance and State Disability Assistance programs. Rule 201.00(h) of Federal Rule 20 CFR 404, Subpart P, Appendix 2.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant is medically disabled under the Medical Assistance and State Disability Assistance programs as of July 1, 2007.

Therefore, the department is ORDERED to initiate a review of the application of October 29, 2007, if not done previously, to determine claimant's non-medical eligibility. The department shall inform the claimant of the determination in writing. The case shall be reviewed in February 2010.

/s/
Rhonda P. Craig
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 04/21/09

Date Mailed: 04/21/09

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.

RPC/cv

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