

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.: 2008-24636

Issue No.: 2009, 4031

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

October 13, 2008

Wayne County DHS (41)

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 13, 2008. The Claimant and the representative appeared at the Department of Human Service (Department) in Wayne County.

The closure date was waived to obtain additional medical information. An Interim Order was issued to obtain new medical records which were reviewed by the State Hearing Review Team (SHRT) who denied the application. 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 month of 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 January 28, 2008 the Claimant applied for MA-P and SDA.
- (2) On March 19, 2008 the Department denied the application: and on April 1, 2009 the SHRT guided by Vocational Rule 202.13 denied the application finding medical evidence for the ability to perform light work.
- (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-three years of age.
- (5) Claimant completed grade 12 and an associates degree in business; and can read and write English and perform basic math.
- (6) Claimant last worked in 1993 cleaning/stocking his father's store.
- (7) Claimant has alleged a medical history of heart surgery, hypertension, right leg weakness, sleep apnea with CPAP use; and treatment for violent outbursts at [REDACTED]
[REDACTED]
- (8) December 2007, in part:

INDEPENDENT PSYCHIATRIC EXAMINATION: History in 1980s of substance abuse. Many psychiatric hospitalizations related to substance abuse and suicide ideation. Released from incarceration in June 2007 and on parole for two years. He was treated in prison with Haldol, Cogentin, Sinequan, Prozac and Zoloft. But not currently under psychiatric treatment. Currently using Advair, Procardia, Crestor, Naprosyn, Nexium, Lisinopril, Antivert and Isosorbide and Lasix.

FUNCTIONING/OBSERVATIONS: Lives in sister's basement, sees son and eats with him. Rides bus but fall asleep, enjoys making purses/leatherwork with hands, Presently engaged in

selling clothing. Showers/changes clothing every day. Came alone to appointment after ride with relative. States 68" and weights 430. Has difficulty waking and gait was awkward. On sitting had difficulty breathing. Hygiene and grooming are marginal.

MENTAL STATUS: In contact with reality, appeared relaxed and poorly motivated, insight impaired. Lacked spontaneity, response to questions relevant, speech goal directed and conclusive, spoke with average reaction time and was audible and productive. Denied and did not appear to be responding to internal stimuli or delusional conviction. Did not appear to be preoccupied to somatic sensations. . Denied depression, anxiety and anger, suspicious and paranoid. Apathetic in mood.

Orientation, memory, information, calculations, abstract thinking, similarities/differences, judgment [Within normal limits.] Except: minor problems with calculations and abstract thinking. **Axis I:** Mood disorder/depression due to medical condition. [REDACTED]
[REDACTED] Department Exhibit (DE) 1, pp. 1-4.

Echocardiogram Report: [Within normal limits.] [Except left atrial and right atrium mildly dilated, moderate to severe hypertrophy left ventricle; and tests results suggestive of grade I diastolic dysfunction. [REDACTED]

(9) April and September 2008, in part:

April: **MEDICAL NEEDS:** DX: hypertension, arthritis, asthma, sleep apnea. Will last lifetime. Ambulatory, no need for special transportation and can come alone to medical appointments. Needs help with meal preparation, shopping, laundry and housework.
[REDACTED] DE 1, p. 20

September: To ER with abdominal pain for 3 days. Not in any acute respiratory or painful distress. BP 129/75, PO2—99%. Alert and orientated times 3, negative neurological deficit. HEENT, Neck, CVS, Chest, Abdomen, Extremities: [All within normal limits.] Except: Hyperpigmentary changes shin and distal leg bilaterally probably secondary to chronic venous status. Morbid obesity. Negative pedal edema and calf tenderness. CRX: mild cardiomegaly and pulmonary status. EKG normal. CHF stable, ejection fraction 60%. TEE: PFO with moderate left-to-right shunt and minimal right-to-left shunt. Recommend CTA to R/O dissection and cath report from 2006 but believed to be normal. Risk of stroke and history will try anti-coagulation when acute dissection R/O.

Previous test results: CT head/brain: IMPRESSION: Chronic small vessel ischemic disease and old lacunar infarct in right caudate nucleus.

CXR right hip: IMPRESSION: Mild osteoarthritis right hip.

CT thorax, abdomen, and pelvis: FINDINGS: No evidence of dissection, thrombosis or aneurysm. No pulmonary embolus, No hilar/mediastinal mass or lymph node enlargement. Tracheobronchial tree is patent. Lungs fields clear, Liver, spleen, pancreas, both adrenal glands are normal and so is gallbladder. Both kidneys show normal function. No hydronephrosis or calculi except 2-cm solid nodule lower pole right kidney need further evaluation to R/O neoplasm. [REDACTED]

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 1993 because the claimant spent most of his adult life incarcerated. 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/mental 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 breathing problems, depression, right hip pain due to osteoarthritis, congestive heart failure, morbid obesity, gait difficulties. The Claimant has had multiple hospitalizations most recently September 2008.

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 fact that the medical records fail to establish 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 ambulation difficulties, breathing problems, morbid obesity, congestive heart failure and mental limitations. Last work was years ago in 1993. Due to several years of incarceration, with release in July 2007, there was no established past relevant work history that can be of any use. Based on this, the 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 sedentary work because of his pain, shortness of breath and

obesity. See finding of facts 8-9. 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-three is considered *closely approaching advanced age*; a category of individuals age 50-54. 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 201.12, for individuals, age 50-54; education: high school graduate—does not provide for direct entry into skilled work; previous work experience, unskilled or none; the Claimant is “disabled” per Rule 201.12.

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 January 2008 application to determine if all other non-medical eligibility criteria are met. The Department shall inform Claimant and the representative 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 April 2010.

/s/

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

Date Signed: 04/24/09

Date Mailed: 04/24/09

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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