

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.: 2008-30343
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
December 3, 2008
Kalamazoo 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 December 3, 2008. The Claimant appeared at the Department of Human Service (Department) in Kalamazoo County.

The closure date was waived to obtain additional medical information. The Department scheduled a medical appointment but the new medical information and X-ray reports were not received. The record 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) 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 June 18, 2008 the Claimant applied for MA-P and SDA.
- (2) On August 19, 2008 the Department denied the application: and on March 27, 2009 the SHRT denied the application finding evidence for the ability to perform past clerical work.
- (3) On August 27, 2008 the Claimant filed a timely hearing request to protest the Department's determination.
- (4) Claimant's date of birth is June 14, 1953; and the Claimant is fifty-five years of age.
- (5) Claimant completed grade 9 and a GED; and can read and write English and perform basic math.
- (6) Claimant last worked in 2002 as a parking enforcement officer for 5 years; and previously worked as a cashier.
- (7) Claimant has alleged a medical history of chronic obstructive pulmonary disease (COPD) breathing problems, low back and neck pain, hepatitis C, hypertension, depression with disorientation and slow speech.
- (8) [REDACTED], in part:

[REDACTED]: CT Abdomen and Pelvis. FINDINGS: Lung windows to base of lung demonstrate no evidence of suspicious infiltrate or an effusion. Normal liver, pancreas, spleen, adrenal glands and kidneys. Gallbladder is absent. No evidence of biliary duct dilations. Opacified and unopacified loops of bowel are unremarkable.

Pelvic structures show no evidence of free fluid likely prior hysterectomy. No evidence of adenopathy. Mild vascular calcifications with no evidence of aneurysm. Osseous structures demonstrate no focal abnormality. IMPRESSION: No adenopathy or acute inflammatory change.

CT neck: No pathologically enlarged; lymph nodes. Other soft tissues and bones appear unremarkable. [REDACTED].
Department Exhibit (DE) 1, pp. 21-22

██████████: MR lumbar: IMPRESSION: minimal degenerative changes, typical for age and without stenosis and stable since ██████████. DE 1, p. 20

(9) ██████████, in part:

██████████: History of COPD presenting for recheck after having exacerbation for which was prescribed course of antibiotics.

General Appearance: alert and appropriate, no appearance of dyspneic. Chest: Lungs actually fairly clear through out, good breath sounds, a couple of soft wheezes anterior bronchi but no prolonged expiratory phase. Extremities: no cyanosis noted. COPD and status post exacerbation, which has resolved. Medications refilled and samples given. ██████████. DE 1, p. 25

██████████: Smoker. WT 130, BP 110/72. CC: pain in both feet for 8-10 years, aggravated by standing or walking. No nighttime burning. Moderately severe COPD, now smoking 4-8 cigarettes a day. .

Alert and well orientated. Hoarse voice. Heart and lungs clear. Right dorsalis pedic pulse palpable. Left not palpable. A: bilateral chronic foot pain likely plantar fasciitis. COPD, depression, Referred to Podiatry. ██████████.

██████████: Has been smoking two packs of cigarettes for 35 years. Medications: Ativan, Lortab, Spiriva Handihaler, albuterol, Paxil. Came today for refills of medication. Vial signs: BP 110/76, WT: 133.8, Extremities: no feet edema but rubor color with microvascular changes. Was encouraged to make appointment for gynecological exam at BCCCP soon. Chronic lumbar pain, Bilateral lower extremity neuropathy secondary to nicotine addiction. Nicotine addiction. Smoking cessation recommended and she was told the nicotine led to the tingling/numbness/burning of her feet; and causes COPD, lung cancer and throat cancer. ██████████ 1, pp. 14-88.

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 2002. 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. There are no medical records establishing functional mental limitations that prevent basic work activities. 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, bilateral foot burning and pain in lower back and neck. The Claimant has been treating with [REDACTED]; and submitted medical records as far back as [REDACTED]. The complaints presented at hearing were in the medical records as far back as [REDACTED]; and there has been medical treatment and testing; and the doctors at [REDACTED] prescribe medications.

The Claimant has not been hospitalized [Testimony to no hospitalizations in over three years.] for acute exacerbations of breathing problems; and there was no testing results including X-rays or pulmonary function test that established COPD. The Claimant has been a heavy smoker for 35 years. The medical records do not establish any symptom of Hepatitis C. Depression has been treated only with medications prescribed by [REDACTED]; who describe the Claimant as alert and orientated. There have been no recent panic attacks or anxiety problems in the medical records of [REDACTED].

Back/neck pain was evaluated with testing and there was no remarkable neck or back defects. See finding of fact 8. Finally, foot burning was claimed to prevent long standing. There were no medical records that established a causation/diagnosis; except for the opinion that the cause was nicotine addiction or plantar fasciitis. Referral to Podiatrist was made but no medical records were submitted. See finding of fact 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 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 not establish ambulation difficulties or dysfunction of the upper or lower extremities. The Claimant testified at hearing to the ability to attend [REDACTED] meetings 3 times a week; and walk two blocks and she can do her own grocery shopping. In the records the Claimant does household chores of laundry, taking out trash and doing the dishes. The Claimant testified to being independent in ADLs. There was no medical record that established disorientation or speech problems in the [REDACTED] treatment. In fact, these medical records showed the Claimant as resourceful in seeking treatment by renewing prescriptions with free samples. Previous records show some non-compliance with medication.

Past relevant work was parking enforcement but the Claimant testified to no driver's license to do this type of work; and inability to perform as a cashier due to her feet. But the Claimant has clerical training from [REDACTED]. Based on her testimony, 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 light work. 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 and over. 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 202.02, for advanced age, age 55 and over; education: limited or less; previous work experience, skilled or semi-skilled—skills not transferable; the Claimant is “disabled” per Rule 202.02.

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 past relevant work or 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 June 2008 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 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.

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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.

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