

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Claimant

Reg. No.: 2008-31035
Issue No.: 2009; 4031
Case No.:
Load No.:
Hearing Date:
December 4, 2008
Wayne County DHS (35)

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 4, 2008. The Claimant appeared at the Department of Human Services (Department) in Wayne County.

The record was extended to obtain new medical records by Interim Order. New medical records were not received and 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) program?

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 August 1, 2007 the Claimant applied for MA-P and SDA.
- (2) On August 9, 2008 the Department denied the application; and on September 23, 2008 guided by Vocations rule 202.13 denied the application finding medical evidence supported a capacity to perform light work.
- (3) On September 4, 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 years of age.
- (5) Claimant completed grade 12; and can read and write English and perform basic math skills.
- (6) Claimant last worked in 2001 performing phone ordering, as a cashier and food service for the BOE.
- (7) Claimant has alleged a medical history of emphysema using four inhalers and a breathing machine, hypertension, feet/ankles swollen with arthritis/gout, back pain and depression.
- (8) June 2007, in part:

DIAGNOSIS: Asthma, gout, arthritis.
Ambulatory, does not need special transportation but needs assistance with meals, shopping, laundry and housework. Cannot return to past work or any other work. [REDACTED] Department Exhibit (DE) 1, p. 8.

- (9) March, April and July 2008, in part:

March: X-rays of lumbosacral spine: Facet joint arthritis L3-S1. Moderate disc space narrowing L5-S1. No fracture or bone destruction. Mild anterior subluxation L4-L5 unchanged.
IMPRESSION: degenerative changes.

X-rays right hip: No change from comparison in 2007. No change areas sclerosis at right ischium. Right hip with no bone destruction or arthritis changes. IMPRESSION: no acute process. [REDACTED]
[REDACTED] DE 1, pp. 21-22

CURRENT DIAGNOSES: Chronic low back pain, Asthma.
HT; 65" [WT: at hearing 152 pounds]

NORMAL EXAMINATION AREAS: General; HEENT;
Respiratory, Cardiovascular, Mental.

FINDINGS: Respiratory: Asthma Syndrome. Musculoskeletal:
lumbar pain L4-L5 disc. Right hip pain. Neuro: Right leg raise at
28 degrees: arthritis.

PHYSICAL LIMITATIONS: Limited, expected to last over 90
days; Lifting/carrying up to 10 pounds 1/3 of 8 hour day; never 20
or over; stand and/or walk at least 2 hours in 8-hour day; sit less
than 6-hours in an 8 hour day; no assistive devices are needed; use
of both hand/arms for simple grasping, reaching, pushing/pulling,
fine manipulating; use of left feet/legs for operating controls.

MENTAL LIMITATIONS: None. Medications: Flexoril,
Darvocet, Voltam, Advair, Proventil, Zocar. [REDACTED] DE 1,
pp. 5-5A.

Diagnoses: Severe asthma, emphysema, chronic back pain. Uses a
cane. Needs assistance with shopping and housework. Cannot
return to past work or any other work. [REDACTED] DE 1, p. 7.

(10) July 2008, in part:

Independent Medical Exam:

HISTORY: Asthma, emphysema and back pain, pain right hip and
gout right foot. Ambulates with a cane for 1/2 block. Independent in
ADLs and personal care.

Refused to get on exam table; and unable to complete detailed
clinical exam. PHYSICAL EXAMINATION: Alert, awake and
orientated. BP 150/94, 130/88. WT 146, HT 65", Visual acuity
with glasses 20/40 bilaterally. HEENT, Skin, Neurological,
Musculoskeletal, Function with upper extremities, muscle tone,
muscle strength, Deep tendon reflexes, knee and ankle jerks,
sitting, standing: [All within normal limits.] Except: straight leg
raising was unable to test, range of motion of lumbar spine was
refused, range of motion of hips, knees and ankles was refused.
Ambulates with unpredictable gait, unable to do heel walk, toe
walk and tandem walk, bend, stoop, carry, push/pull, squat and
arise or perform heel-shin test. [REDACTED]

Pulmonary Function Test results: FVC--2.90. FEV1--2.16. DE 1,
pp. 10-19

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 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 medical evidence to support a finding that Claimant had physical limitations that are more than minimal and impact basic work activities. The Claimant's physical impairments meet the duration period. There was no medical evidence of a mental impairment impacting basic work activities. See finding of fact 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 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.

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 Listings 3.00 *Respiratory system* and 1.00 *Musculoskeletal System*.

Listing 3.02 is met when FEV1 is 1.25; and FVC is 1.45. On the pulmonary function test, the Claimant's results were FVC--2.90; and FEV1--2.16. Thus, Listing 3.02 is not met.

Listing 1.00 is met if the medical records establish loss of function. There was no medical evidence that the Claimant has loss of function of either upper extremity. See finding of facts 8-10. X-rays in March 2008 only demonstrate degenerative disease, [REDACTED] found the Claimant ambulatory [REDACTED] opined the Claimant did not need ambulatory devices and could use left leg for operating foot controls. [REDACTED] could not complete a full range of motion of the Claimant's lower extremities due to her refusal to test. But [REDACTED] did not find atrophied muscles; and strength in all extremities was normal; and the doctor did not describe lower leg swelling.

In this case, this Administrative Law Judge finds the Claimant is not presently disabled at the third step for purposes of the Medical Assistance (MA) program because the medical evidence does not meet the intent or severity of the listings. See finding of facts 8-10. 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 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.

The Claimant's past relevant work was phone ordering, cashier and food service. At the hearing the Claimant testified she could not return to past relevant work due to standing, sitting and walking requirements. The undersigned accepts this testimony; and will not return the Claimant to past relevant work. But notes, the medical records did not establish lower extremity dysfunction to the extent of the Claimant's subjective evidence.

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 functional capacity," defined simply as "what can you still do despite you 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 limitations.

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 is considered *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 Light Work as a Result of Severe Medically Determinable Impairment(s), Rule 202.13, for approaching advanced age, age 50-54; education: high school graduate or more; previous work experience, unskilled or none; the Claimant is “not disabled” per Rule 202.13.

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 program and the State Disability Program.

It is ORDERED; the Department’s determination in this matter is AFFIRMED.

/s/

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

Date Signed: 03/27/09

Date Mailed: 03/27/09

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.

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