

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.: 2008-4616
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
March 17, 2008
Wayne County DHS (43)

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 March 17, 2008. The Claimant, his friend and representative appeared at the Department of Human Service (Department) in Wayne County.

The record was left open to obtain additional medical information. The medical information was submitted to the State Hearing Review Team (SHRT) 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) retroactive MA-P to October 2006 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 on January 27, 2007.
- (2) On July 2, 2007 the Department denied the application; and on September 3, 2008 the SHRT denied the application finding the medical records indicated a capacity to perform unskilled sedentary work.
- (3) On September 25, 2007 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 thirty-two years of age.
- (5) Claimant completed grade 12 plus two years in PE and music; and can read and write English and perform basic math.
- (6) Claimant last worked in July 2006 as a security guard at [REDACTED], [REDACTED], [REDACTED] and was in loss prevention and was a bouncer.
- (7) Claimant has alleged a medical history of multiple lower extremity amputations, open sores, right and left leg pain, back pain, shortness of breath and depression.
- (8) December 2006, in part:

History of insulin dependent diabetes mellitus with osteomyelitis right foot in [REDACTED] after previous amputation of right foot digits. Re-admit here. Had uneventful stay here at hospital with treatment for osteomyelitis of right foot involving second and fifth metatarsal. These were previously resected with digit amputations. Placed on IV antibiotics and with management of infections disease gradually decreased in erythema and edema of right foot, Will be discharged to home on antibiotics for 8-10 weeks. Follow up with me, and [REDACTED]. Stay off right foot has ulceration on plantar aspect of metatarsal. [REDACTED], DPM.

- (9) April, July, October and December 2007, in part:

History of osteomyelitis and on IV antibiotics as outpatient for last there months. Admitted through ER for painful swelling of right foot and pain radiating to right groin. History includes

hypertension, diabetes and bronchitis. Chest X-ray negative. [REDACTED]
[REDACTED], MD.

Presented with gases within soft tissue right foot. I and D performed. Lungs bases sound mildly diminished. Other extremities within normal limits. Maintain on absolutely no right leg weight bearing. Take IV antibiotics as outpatient. [REDACTED]

FINAL DIAGNOSES: Diabetic neuropathy, Acute renal failure, Osteomyelitis, Venous thrombosis, Leg cellulites, complications of vascular device, Chronic foot ulcer, Diabetic circulatory device, Adverse effects to antibiotics, Staph infection, Right lower abdominal pain, Hypertension. Admitted for right foot/leg swelling and has a left arm PICC inserted 3 months ago. Past surgical history: bilateral toe amputation, right hand surgeries, left knee surgery. Discharged to follow with [REDACTED], [REDACTED] with prescriptions and 1800 ADA diet. [REDACTED], DO.

Bone left foot excision with fibrosis and acute and chronic inflammation

(10) January 2008, in part:

FINAL DIAGNOSES: Uncontrolled diabetes mellitus. Foot cellulites, Osteomyelitis of bilateral ankles, hyponatremia, Gangrene, Chronic leg ulcer, bone involvement, Chronic foot ulcer, Diabetes, Iron deficiency anemia, Anemia of chronic disease, Hypertension, Hyperlipidemia, Lymphadenitis, Truck carbuncle, buttock carbuncle, Pseudomonas infection, Staph infection. History of venous thrombosis. [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 July 2006. 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 sufficient medical evidence to support physical limitations that have more than a minimal effect on basic work activities. There were no medical records that established mental impairments that prevented basic work activities.

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 and mental impairment 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.

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 Disorders based upon the medical facts of several hospitalizations for severe lower leg infections and amputations. The medical records were insufficient to establish severe of ability to physically function except to the bilateral lower extremities according to 1.00Ba. There was no physical loss of functioning of the bilateral upper extremities. See finding of fact 8-10.

This Administrative Law Judge finds the Claimant is not presently disabled at the third step for purposes of the Medical Assistance (MA) program. 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 all body systems except the lower extremity amputations, bone infections and repeated hospitalizations for same. The claimant last work was as security guard for several retailers. Based on the medical records the undersigned finds the Claimant cannot return to past work or to any other type work.

It is the finding of the undersigned, based upon the medical data and hearing record that Claimant is "disabled" at the fourth 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 other work activities 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 and State Disability assistance 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 2007 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 May 2010.

/s/

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

Date Signed: 05/14/09

Date Mailed: 05/15/09

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

cc:

