

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. 2008-4734

Issue No. 2009

Case No:

[REDACTED]

Load No.

Hearing Date:

January 28, 2008

Wayne 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 January 28, 2008 at the Department of Human Services (Department) in Wayne County. The Claimant appeared for the hearing.

The record was left open to obtain additional medical information. An Interim Order was issued for additional medical records and independent cardiac exam. No new medical records were 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) 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 February 23, 2007, the Claimant applied for MA-P.

(2) On June 13, 2007, the Department denied the application; and on December 27, 2007 the SHRT guided by Vocational Rule 202.20 denied the application because medical records were evidence for the capacity to perform light work.

(3) On July 19, 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 forty-four years of age.

(5) Claimant completed grade 12 and one semester higher education; and can read and write English and perform basic math.

(6) Claimant last worked in February 2006 in security for 6-9 months; and in security for [REDACTED] seven years.

(7) Claimant has alleged a medical history of heart disease with continued chest pain, sleep apnea, diabetes mellitus, hypertension and depression

(8) October 2006; January 2007, in part:

October 2006: Ultrasound left lower extremity: IMPRESSION: DVT could not be excluded especially the superficial femoral vein. After swelling subsides from exacerbation of CHF, repeat ultrasound if clinically indicated. [REDACTED]
Department Exhibit (DE) 1, pp.

December 2006: Medications: Glucophage, Metropropranolol, Quinapril, Potassium, Lasix, Prozac, Lovastatin, Aspirin [REDACTED]
[REDACTED] DE 1, p. 24

January: IMPRESSION; Severe obstructive sleep apnea. Recommend use of CPAP, weight reduction; avoid driving, operating heavy machinery until daytime sleepiness is corrected. Avoid caffeine and alcohol especially before sleep. [REDACTED]
[REDACTED] DE 1, p. 30.

January 2007: HISTORY: Fatigue, weight gain, Left lower extremity pain, not sleeping well, lower extremity swelling bilateral, depression, numbness left lower extremity, shortness of breath (SOB) with exertion, right thigh pain.

CURRENT DIAGNOSIS: Morbid obesity, obstructive sleep apnea, hypertension, depression, high cholesterol, pain in left leg, depressed glucose metabolism.

HT 5", WT 350+; BP 180/100.

FINDINGS: SOB, decreased breath sounds, decreased heart sounds, 2+ edema bilateral lower extremity, obese abdomen, wobbling gait partially due to obesity. Depressed mood.

NORMAL EXAMINATION AREAS: HEENT; Neuro. Mental Alert and orientated times 3, follows directions.

CLINICAL IMPRESSION: Stable.

PHYSICAL LIMITATIONS: No physical Limitations. Can lift up to 10 pounds 1/3 of 8 hour day. No assistive devices are needed; use of both hand/arms for simple grasping, reaching, pushing/pulling, fine manipulating; use of both feet/legs for operating controls. Can meet own needs in home.

MENTAL LIMITATIONS: none. [REDACTED]

[REDACTED] DE 1, pp. 22-23.

- (9) April 2007, in part:

Independent Medical Examination: States blood sugar 114-134, taking Glucophage, hypertension. States seen/treated in ER several times without admission. States chest pain 10 times in last 3 months, episodes of dizziness. Last use of nitroglycerin was 1999 not currently taking. Medical records state: chest pain during sleep apnea testing and pain was relieved. History of type II diabetes, hypertension, morbid obesity. No history of myocardial infarction or CVA.

PHYSICAL EXAMINATION: Vital Signs: HT 5'9", WT 400+, BP 130/100, Visual acuity without glasses 20/50 right and 20/40 left. General Survey, HEENT, Respiratory, Cardiovascular, Skin, Extremities, Bones & Joints, Neurological: [All within normal limits.] Except: abdominal obesity, mild tenderness to palpation lower lumbar area, Pedal edema 1+ bilateral lower extremities, left greater than right. Difficulty with getting on/off table due to gait and weight, slight limp left side, wide based gait, unable to do tandem walk, heel walk or toe walk due to weight and wide stance. Able to squat to 20% and recover. Not using CPAP machine. History of edema both lower extremities secondary to weight. Some limits in range of motion of right/.left hip and right left knee.

[REDACTED] DE 1, pp. 7-15.

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 February 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 (6th Cir 1985).

In this case, the Claimant has presented medical evidence to support a finding that the Claimant has mental/physical limitations which impact his abilities to perform basic work activities. The impact on performance of basic work activities is more than minimal. It is necessary to continue to evaluate the Claimant’s impairments under step three.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's mental impairments are 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 mental/physical 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. In this matter, the medical records establish hypertension, depression and some range of motion limitations of the hips and knees. The Claimant alleges a cardiovascular impairment but clinical medical tests establish cardiovascular function within normal limits; and no recent use of nitroglycerin for chest pain. There was medical evidence of blood pressure reading outside of normal. But no appropriate medical tests establish end organ damage to brain, heart, kidneys or eyes.

The Claimant was diagnosed with severe sleep apnea in January 2007 but told [REDACTED] [REDACTED] he was not using the recommended CPAP breathing machine. The medical records establishes morbid obesity, which is not a listing impairment. At hearing, the Claimant testified to a weight of 460 pounds. See Finding of Facts 8-10. [REDACTED] attributed most of the abnormal clinical results secondary to obesity. The mild range of motion limitations of hips and knees has not resulted on a loss of function under Listing 1.00 *Musculoskeletal System* under Appendix 1 of Subpart P of 20 CFR, Part 404.

Listing 12.04, *Affective Disorders* is relevant to the diagnosis of depression. After reviewing the criteria of the listings, the undersigned finds the Claimant's medical records do not substantiate that the Claimant's mental impairment meets the intent or severity of listing requirements of 12.04.

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. 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 Claimant 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. See 20 CFR 416.945.

Claimant's past relevant work was basically related to security/corrections. But due to the Claimant's testimony at hearing, the data in the medical records of his functional abilities and morbid obesity, the Claimant cannot return to past relevant work.

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 sedentary work. 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 forty-four is considered a *younger individual*; a category of individuals age 18 to 49. 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 201.28, for younger individual, age 18 to 49; education: high school graduate or more; previous work experience, skilled or semiskilled—skills not transferable; the Claimant is “not disabled” per Rule 201.28.

It is the finding of the undersigned, based upon the medical data and hearing record that Claimant is “not disabled” at the fifth step.

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.

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: March 4, 2009

Date Mailed: March 19, 2009

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:

