

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. 2008-4795

Issue No. 2009; 4031

Case No: ██████████

Load No. ██████████

Hearing Date:

October 13, 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 October 13, 2008. The Claimant and his representative ██████████ and his friend ██████████ appeared at the Department of Human Services (Department) in Wayne County District ██████████.

The record was left open to obtain additional medical information. Claimant waived the closure date on the record. 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) 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 December 14, 2006 the Claimant applied for MA-P and SDA.
- (2) On August 16, 2007 the Department denied the application; and on February 10, 2009 the SHRT found medical records failed to establish duration per 20 CFR 416.909.
- (3) On August 7, 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-five years of age.
- (5) Claimant completed grade 12; and can read and write English and can perform basic math skills. Department Exhibit (DE) 1, p. 3.
- (6) Claimant last worked in November 2005 inspecting glass and previously part-time hanging drywall for three years, was a cook at a restaurant, [REDACTED] factory work, and was [REDACTED] for four years.
- (7) Claimant has alleged a medical history of [REDACTED] pancreatitis with surgery for gallbladder removal, [REDACTED] hospitalization for weakness, vomiting and stomach pain; and [REDACTED] bilateral foot pain with scaling/skin loss sides/bottom of feet; and denies mental impairments.
- (8) [REDACTED], in part:

Three day hospitalization: Final Diagnosis: Acute pancreatitis, Secondary: Calculus of gallbladder with laparoscopic cholecystectomy.

Admitted for abdominal pain and vomiting. Amylase and lactic acid elevated determined to represent pancreatitis. No significant

past medical history. Admits smoking marijuana and drinking alcohol daily. Physical Examination all within normal limits including skin and extremities. After removal of gallbladder he did very well, tolerated food intake, was ambulating and liver enzymes, amylase and lipase went to normal. Discharge to home in stable condition. Activity as tolerated. Avoid driving for two weeks. [REDACTED] DE 1, pp. 23-28.

(9) [REDACTED], in part:

Evaluation for abdominal pain with seven hour onset in upper abdomen and symptoms are moderate with nausea and vomiting with history of pancreatitis. Consumes alcohol socially. All systems negative except above. Physical Examination [All within normal limits including upper/lower extremities and skin intact.] Except BP Treated medically. X-ray abdomen/chest: nonspecific abdomen and chest normal, Discharged to home in stable condition with medication for pain. Stop drinking alcohol. Follow up with PCP or return to clinic. DE 1, pp. 8-22.

[REDACTED]: Chronic lesions on areas of bilateral feet with pain. All deformities amendable to conservative, in-office treatment or out-patient treatment. [REDACTED]. DE 1, P. 29.

(10) [REDACTED], in part:

[REDACTED]: Patient in form swollen bilateral calluses of which two locations are inflamed with acute bunions. Will require treatment on regular basis to control foot pain. [REDACTED]. Claimant Exhibit, p. 2.

[REDACTED]: Final Diagnosis: Bilateral foot pain. Follow up with PCP in 2-3 days. Vicodin prescribed with restrictions in activity [REDACTED]. Claimant Exhibit, p. 1.

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 he was not performing SGA since November 2005. 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 treatment for abdominal pain which was diagnosed as pancreatic. Medical treaters advised to stop drinking alcohol in [REDACTED]. [REDACTED] There were no other medical records for treatment of pancreatitis. The Claimant testified to not drinking alcohol since approximately [REDACTED]. Thus the medical records do not establish a physical impairment due to pancreatitis; and the impairment did not last the duration required by 20 CFR. 416.909.

The Claimant did have foot pain due to calluses in [REDACTED]. All medical records of hospitalizations [REDACTED] do not establish a bilateral foot condition. But in [REDACTED] [REDACTED] writes of bilateral foot condition being medically treated. Again in [REDACTED] [REDACTED] notes treating this condition and the Claimant submitted medical records in [REDACTED] establishing medical treatment for bilateral foot pain. The undersigned decides bilateral foot impairment meets the duration requirement of 20 CFR 416.909. These impairments would impact his abilities to perform basic work activities more than minimally. See Finding of Facts 9-10.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's physical 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 impairments are "listed impairment(s)" or equal to a listed impairment 20 CFR 416.920(d). According to the medical evidence, alone, the Claimant cannot be found to be disabled.

Based on the medical records available, the Claimant has received treatment for bilateral foot pain. Photo evidence was submitted at the time of hearing; and the photos show areas of lesions in various stages of healing on the ball of the feet. The Claimant testified to soaking both feet and wearing soft shoes. The Claimant did not use a walking aid when appearing at hearing.

Appendix 1 of Subpart P of 20 CFR, Part 404 Listing 1.00, *Musculoskeletal System* was reviewed for the criteria required to meet the listing; and the undersigned finds the Claimant did not establish loss of function required at 1.00Ba with the medical records submitted.

In this case, this Administrative Law Judge finds the Claimant is not 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) prevents 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 landscape, cooking and cashier. But the undersigned based on [REDACTED] finds the Claimant cannot return to past relevant work. See Finding of Fact 11. Thus evaluation will proceed under step five.

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 by impairments to sedentary work; and based on [REDACTED] limit to permanent 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-five is considered a *younger individual*; a category of individuals in age group 45-49 when age is a lesser advantage factor for making adjustment to other work; Rule 201.21; education: high school graduate or more; previous work experience: skilled or semiskilled—skills not transferable; Claimant is “not disabled” per Rule 201.21.

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 evidence to support a finding that Claimant's impairments meet the requirements under SSI disability standards, and prevent other sedentary work for ninety days. This Administrative Law Judge finds the Claimant is presently 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 State Disability Assistance programs.

It is ORDERED the Department's decision is AFFIRMED.

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

Date Signed: February 26, 2009

Date Mailed: March 2, 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

cc:

