

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.: 2008-11860

Issue No.: 2009, 4031

Case No.:

Load No.:

Hearing Date:

July 30, 2008

Livingston 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, the Claimant appeared at a hearing held on July 30, 2008 at the Department of Human Service (Department) in Livingston County.

The closing date was waived. Additional medical records were obtained and reviewed by the State Hearing Review Team (SHRT). SHRT denied the application; and the matter is 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 June, July and August 2007 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 September 5, 2007 the Claimant had filed an application for MA-P and SDA.
- (2) On November 29, 2007 the Department denied the application; and on November 24, 2008 the SHRT guided by Vocational Rule 203.21 denied the application finding an ability to perform other medium unskilled work
- (3) On December 20, 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 fifty-four years of age.
- (5) Claimant completed grade 12 and an associates degree; and can read and write English and perform basic math.
- (6) Claimant last worked in April 2007 performing janitorial services on/off since 1981.
- (7) Claimant has alleged a medical history of low back/thoracic area pain, right and left shoulder pain, left knee pain, hepatitis C for ten years without jaundice or ascites, Bipolar disorder with decreased memory.
- (8) May 2006 and June to September 2007, in part:

May 2006: MRI: IMPRESSION: Mild multilevel spondylotic stenosis, worse at levels L3-4 and L4-5 where there is mild central stenosis. Various degrees of foraminal stenoses. Distal cord and conus are normal. Degenerative changes. [REDACTED]

June 2007: Office Visit: BP 138/81, Weight 292 pounds. Examination: Morbidly obese. HEENT, Respiratory, GI, Skin, Neurological, and Musculoskeletal: [Within normal limits.] Except: Mild anxiety, joint tenderness, OA knees, muscle tenderness in symmetric array c/w FMS. Low back tenderness and spasm at S1. [REDACTED]

July: INDEPENDENT MEDICAL EXAM: History: Bad back and bad knee. Medications: Ambien, lisinopril HCT and morphine sulfate. Stopped smoking 6 months ago. Denies drinking and drug use.

PHYSICAL EXAMINATION: HT: 73-74", WT: 281, BP 134/90. Well built and nourished and did not appear ill or in any distress. Ambulatory without assistive devices. Visual acuity with glasses: 20/20 bilaterally. Fundoscopic exam was normal. Skin, HEENT, Neck, Chest and Lungs, Heart, Abdomen, Extremities, Musculoskeletal and Range of Motion, Neurological: [All within normal limits.] Except: lower extremity various veins and status dermatitis. Slight kyposcoliosis of spine. Tenderness of lumbosacral spine. Crepitus of left knee.

CONCLUSION: Found to have degenerative disk disease of lumbosacral spine. Osteoarthritis of left knee. Hypertension. Chronic hepatitis C. Venous insufficiency with stasis dermatitis.

[REDACTED]. Department Exhibit (DE) 1, pp. 60-63; and 29-31 and 106-113.

- (9) DHS-49 in September 2007 compared to October 2007; or one month, in part:

September 2007: CURRENT DIAGNOSIS: Lumbar disc disease-spinal stenosis, arthritis. Post traumatic left knee deformity and arthritis, Hypertension. Fibromyalgia, inguinal hernia, bipolar, active hep C, previous alcoholic.

HT: 76", WT: 289, BP 120/80. Vision best corrected right 20/20, left 20/15.

NORMAL EXAMINATION AREAS: HEENT; Respiratory; Cardiovascular, Neuro.

FINDINGS: General: obese, moves stiffly. Abdominal: increased LFTs, chronic active hep C secondary to previous IV drug use, right bulging inguinal. Musculoskeletal: moves stiffly and decreased LS range of motion.

CLINICAL IMPRESSION: Stable.

PHYSICAL LIMITATIONS: Limited, expected to last over 90 days; Lifting/carrying up to 20 pounds 1/3 of 8-hour day; stand and/or walk less than 2 hours in 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 need in home.

MENTAL LIMITATIONS: in memory and sustained concentration. [REDACTED] DE 1, pp. 127-128.

October 2007: CURRENT DIAGNOSIS: Lumbosacral spondylosis, lumbago, knee OA, FMS.

HT: 76", WT: 288, BP 144/82.

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

FINDINGS: Musculoskeletal: antalgic gait, decreased range of motion, muscle spasm.

CLINICAL IMPRESSION: Stable.

PHYSICAL LIMITATIONS: Limited, expected to last over 90 days; Lifting/carrying less than 10 pounds 1/3 of 8 hour day; stand and/or walk less than 2 hours in 8 hour day; sit less than 6 hours in 8 hour day; no assistive devices are needed; use of both hand/arms for simple grasping, reaching, no pushing/pulling; use of both feet/legs for operating controls. Can meet own need in home.

MENTAL LIMITATIONS: None. [REDACTED] DE 1, pp. 8-9.

(10) July and September 2008, in part:

July: Presenting Problem: Referred for mental health and substance abuse problems.

Arrived on time, oriented times 3, appeared lethargic, memory and attention span appeared impaired. Mood depressed and appropriate. Thought content, processes, logic, intellect and judgment and insight were adequate/appropriate. No reported suicidal ideation.

Polysubstance abuse began as teenager. Currently drinking reported daily, six drinks per occasion. Has taken Xanax and other benzodiazepines most of life on regular basis. Used cocaine in binges and reported last use in 1990. Last use of crack was 1990. Last reported use of LSD was over 10 years ago. Used heroin but no reported regular use. Continued to use marijuana to 6 joints a day. Reported last use July 2008. Currently takes 2 oxycontin per day and used today. Began to see psychologist in 1990, spent time at Clear house residential treatment in 1990.

Living with mother and helps to care for house and his mother.
Takes opiates to help chronic pain and apprehensive about
stopping medications.

Assessment: Long term sobriety will be problem because of drug
dependency. Using drugs to cope; and has developed tolerance.
[REDACTED]. DE N, pp. 12-14.

September: Three View lumbar spine X-ray: IMPRESSION: L5-
S1 moderate degenerative disc disease with narrowing and
posterior element sclerosis. May be chronic. S1-S2 mild
degenerative changes and small amount of sclerosis. Mild lumbar
scoliosis convex right centered at L3-L4.
[REDACTED] DE N, p. 1.

September: CURRENT DIAGNOSIS: lumbago, sciatica, OA
knees, spondylosis, FMS.

HT: 76", WT 285, BP 123/79.

NORMAL EXAMINATION AREAS: HEENT; Cardiovascular,
Abdominal.

FINDINGS: General: shifts weight d/t discomfort. Respiratory:
rales. Musculoskeletal: paraspinal spasm and decreased range of
motion spine, legs, knees and pain in back and knees. Mental:
moderate anxiety.

CLINICAL IMPRESSION: Deteriorating.

PHYSICAL LIMITATIONS: Limited, expected to last over 90
days; Lifting/carrying less than 10 pounds 1/3 of 8 hour day; stand
and/or walk less than 2 hours in 8 hour day; sit less than 6 hours in
8 hour day; no assistive devices are needed; no use of either
hand/arms for simple grasping, reaching, pushing/pulling, fine
manipulating; no use of either feet/legs for operating controls. Can
meet own need in home.

MENTAL LIMITATIONS: Memory and sustained concentration.
Medications: oxycodone, MSIR, albuterol, ambient, zestoretic,
flexoril, xanax. [REDACTED]. DE N, pp. 2-3.

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 SGA. 20 CFR 416.920(b) In this case, under the first step, Claimant testified to not engaging in SGA since April 2007. The Claimant is not disqualified from 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 a finding that Claimant has some physical/mental limitations. The medical evidence has established that Claimant has a physical/mental impairment that has more than a minimal effect on basic work activities. The Claimant’s impairments are expected to last more than 12 months. See finding of facts 8-10.

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 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 Listing 1.00 *Musculoskeletal System* and 12.00 *Mental disorders*.

In this matter, the medical records failed to establish the intent, severity and criteria of the listings. There was no appropriate medical testing establishing spinal cord compression or episodes of repeated de-compensation due to the mental disorder. The Claimant was diagnosed drug dependent.

There were no present symptoms of hepatitis C. The Claimant denied any episodes of ascites and jaundice; and medical records ruled out icterus. There was no medical record of a liver biopsy establishing hepatitis C.

The Claimant is independent in ADLs and provides house chores and cares for his mother. The Claimant is driving four of seven days a week; and this demonstrates function of both upper and lower extremities in the complex activities of driving. Recent medical records establish long standing polysubstance abuse, admitted in July 2008 but denied at hearing that same month. The Claimant's credibility on all aspects of testimony at hearing about his functional capacity is at question.

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 of lack of medical

records to establish the severity or marked difficulties needed to establish a listing level impairment. 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.

Here, the medical findings supported some range of motion limits of the lumbosacral spine. Appropriate medical testing established some mild degenerative changes, which the Claimant has sought treatment in reviewed medical records as early as 2005. There was a large inconsistency in the opinions of examining doctors; i.e. [REDACTED]. See finding of fact 8-10 But the Claimant testified to being unable to return to past relevant work as a janitor. The undersigned accepts this testimony; and will evaluate functional capacity 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 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-four 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 evidence to support a finding that Claimant’s physical impairments meet the disability requirements under SSI disability standards and prevent other medium work 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: 04/02/09

Date Mailed: 04/02/09

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

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