

[REDACTED]

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.: 2008-15441
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
September 11, 2008
Wayne County DHS [REDACTED]

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 September 11, 2008. The Claimant appeared at the Department of Human Service (Department) in Wayne County.

The record was left open to obtain additional medical information. New medical records were submitted to the State Hearing Review Team (SHRT) and the application was denied. The matter is now before the undersigned for a final decision.

ISSUE

Whether the Department properly determined the Claimant was "not disabled" for purposes of Medical Assistance based on disability (MA-P), retroactive MA-P for the month of September, October and November 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 December 11, 2007 the Claimant applied for MA-P and SDA..
- (2) On February 19, 2008 the Department denied the application; on March 3, 2009 the SHRT denied the application finding the medical records indicated an ability to perform sedentary to light work.
- (3) On February 19, 2008 the Claimant filed a timely hearing request to protest the Department's determination.
- (4) Claimant's date of birth is [REDACTED]; and Claimant is forty-one years of age.
- (5) Claimant completed grade 12 and two years of college; and can read and write English and perform basic math.
- (6) Claimant was last employed full-time in [REDACTED] driving a fork-lift and hi-lo; and in [REDACTED] [REDACTED] part-time as an automotive parts sliding belt operator 20-30 hours per week at [REDACTED] per hour; and lifting less than 10 pounds.
- (7) Claimant has alleged a medical history of shortness of breath (SOB), chest pains, and hypertension.

- (8) [REDACTED], in part:

[REDACTED]: DISCHARGE SUMMARY: Comes with insidious onset of dyspnea on exertion and one week of lower extremity edema with difficulty ambulating. HOSPITAL COURSE: Heart rate in 90s, BP 130- 140/70-80. Dry crackles bilaterally with expiration phase. Skin: positive for sclerotic, psoriatic diffusely. Echocardiogram was normal LD systolic dysfunction and impaired diastolic dysfunction and LVH. A CT scan lung was negative. CT scan demonstrated bilateral upper lobe opacities. While lying flat for 30 minutes, no dyspnea noted. Pulmonary recommended outpatient PFT and chest X-ray and clinic follow up. Congestive heart failure

was compensated at discharge for hypertensive restrictive cardiomyopathy. May have some chronic hypertensive nephrosclerosis but not active now. Blood pressure controlled. Discharged with medications: Topical cortisone for psoriasis, Lisinopril, Diltiazem, Lasix, Aspirin, and prescription for pulmonary function test and number of pulmonary clinic to follow up. Smoking cessation counseled. [REDACTED]. Department Exhibit (DE) 1, pp. 25-27.

[REDACTED]: TWO DAY ADMISSION: Came in with SOB and diffuse swelling. Admitted to not using prescribed medications for 4 months. Chest X-ray was consistent with CHF. Pulmonary will follow and give home oxygen. Mild renal impairment and will follow with nephrology clinic. Discharge Diagnoses: Congestive Heart Failure (CHF) exacerbation secondary to non-compliance. Noncompliance. Left ventricular diastolic dysfunction. Chronic respiratory failure. Obesity, hyperventilation syndrome. Obstructive sleep apnea very likely. Mild right venous insufficiency. Morbid obesity.

Follow up with PCP or free clinic in 4 days, with cardiology at [REDACTED] in 2 weeks, and [REDACTED] in 2 weeks. Oxygen 3 liters nasal cannula per minute. Stop smoking. Medications: Cardizem, Lisinopril, Lasix, Ecotrin, Zantac, Zocor. [REDACTED]. DE 1, pp. 18-26.

(9) [REDACTED], in part:

HISTORY/OBSERVATIONS: Currently on medication. Blood pressure elevated on today's exam. Smoking one-pack a day for 30 years; and drinking occasionally. Medications: Avelox, Lasix, Cozaar, Metoprolol, simvastatin and aspirin.

PHYSICAL EXAMINATION: Vital signs: HT 5'7", WT 252, BP 170/110. Visual acuity without glasses 20/30 bilaterally. General Survey, HEENT, Respiratory. Cardiovascular, Gastrointestinal, Skin, Extremities, Bones & Joints, Neurologic: All within normal limits.] Except: inspiratory and expiratory wheezing scattered in lung fields with mild SOB, 1+ pitting edema in bilateral lower extremities. IMPRESSION: Currently on medication with poor blood pressure control. At risk for further cardiovascular events due to obesity, poorly controlled blood pressure, cigarette smoking and nicotine addiction.

Based on today's examination: Able to frequently lift 10 pounds and occasionally lift 10-15 pounds. Able to stand/walk about two

hours in 8 hour day due to SOB. Unlimited use of arms for simple grasping, reaching, pushing, pulling and fine manipulating. Unlimited use of feet for foot controls. Biggest challenge is heart disease. [REDACTED]. DE N, pp. A-E and J-N.

Chest X-ray: IMPRESSION: Cardiomegaly. No active lung disease. DE N, p. E.

Pulmonary Function Test results: FVC--1.35; FEV--1.17. Low vital capacity. Height: 67.” DE N, p. F-I.

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 400.10, *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 CRF 416.905

In determining whether an individual is disabled, 20 CRF 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) The Claimant testified in [REDACTED] to performing SGA part-time work for 20-30 per week since [REDACTED]. The Claimant earns [REDACTED] per month at work where he lifts less than 10 pounds. Even though [REDACTED] is excess of the 2008 SGA limit of [REDACTED] per month; the wages the Claimant earned in certain months, [REDACTED] is below [REDACTED]. Therefore, without more specific evidence, the Claimant is not eliminated from MA-P at step one; further review of the claim is necessary.

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 of physical limitations that are more than minimal and effect basic work activities. The medical evidence has established that Claimant has limitations that have more than a minimal effect on basic work activities. Claimant’s impairment has lasted continuously for twelve months or more. 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 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 can 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 the Claimant’s functional limitations to the criteria of Listing 3.00 *Respiratory system* and Listing 4.00 *Cardiovascular system*. The medical records establish a history of the Claimant’s non-compliance. For example: the Claimant failed to take prescribed medications, including oxygen ordered in [REDACTED] and had to return to the hospital; the Claimant continued to smoke in spite of warnings form the medical professionals; and the Claimant is morbidly obese for his

physical systems. That the Claimant can work to 30 hours a week has been established by the Claimant's testimony. [REDACTED] clinically examined the Claimant and opines that based on her exam the Claimant could perform work to certain levels. But the Claimant had abnormal PFT results for his height. See finding of facts 8-10.

Listing 3.02 *Chronic Obstructive Pulmonary Disease* is established under this listing when FEV1 is 1.35 and FVC 1.55. The Claimant's lung function results were FVC--1.35; and FEV--1.17. Thus the Claimant does meet this listing. The Claimant's physical conditions of enlarged heart, lung volume restriction and obesity are severe. The Claimant is a young man, age 41, with critically damaged body systems; and these impairments are not going to improve unless treated. The undersigned finds the Claimant "disabled" at step three because he meets Listing 3.02. The undersigned decides the Claimant is "disabled" at step three.

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

It is ORDERED; the Department's determination in this matter is REVERSED.

Accordingly, the department is ORDERED to initiate a review of the December 2007 application to determine if all other non-medical eligibility criteria are met. The Department shall inform Claimant 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 March 2010.

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

Date Signed: 03/18/09

Date Mailed: 03/19/09

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.

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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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