

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.: 2008-15791
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
June 16, 2008
Kalamazoo 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 June 16, 2008 at the Department of Human Service (Department) in Kalamazoo County. The Claimant appeared without a representative.

The record was left open to obtain additional medical information; and an Interim Order was issued for additional new medical evidence. No new evidence was received; and the record closed. The matter is now before the undersigned for a final decision.

ISSUES

Whether the Department properly determined the Claimant is "not disabled" for purposes of Medical Assistance based on disability (MA-P) and retroactive MA-P for July 2007 and State Disability Assistance (SDA) 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 October 29, 2007 the Claimant applied for MA-P and SDA.
- (2) On January 11, 2008 the Department denied disability; and on May 14, 2008 the SHRT denied the application because medical records indicated expected improvement within 12 months from the date of onset.
- (3) On February 25, 2008 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-three 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 last worked as a bus driver until November 2005, temporary laborer work until July 2007; and currently working at a restaurant 3-4 hours a day, 3-5 days a week earning [REDACTED] per hour beginning in April 2008.
- (7) Claimant has alleged a medical history of stroke, shortness of breath, chest pain/pressure, right/left arm weak grip and depression with decreased memory.
- (8) July to October 2007, in part:

July: Ten day Hospitalization: DISCHARGE DIAGNOSES: Hypertensive emergency, resolved. Benign essential hypertension. Hypothyroidism. Pericardial effusion, status post pericardial window. Nicotine dependence. Mild renal insufficiency. Elevated LFTs. History of alcohol abuse.

HISTORY: To ER for left-sided weakness and slurred speech. Has not been taking medication prescribed for blood pressure or thyroid. MRI brain showed small subacute ischemic infarct, corona

radiate and chronic ischemic vessel disease. Echocardiogram showed moderate pericardial effusion, left ventricular hypertrophy with ejection fractions of 70%. A pericardial window was performed which was well tolerated. Blood pressure stabilized and cardiology signed off of care. Discharged in stable condition. Medications: [REDACTED]. To follow with PCP in next 2 weeks and cardiology in one week. [REDACTED]. DE 1, pp. 35-102.

(9) September 2007, in part:

DISCHARGE DIAGNOSES: Chest pain syndrome with recurrent pericarditis. Hypothyroidism. Hypertension with remote CVA.

TWO DAY HOSPITALIZATION: EKG showed ST elevation. Serial cardiac enzymes were normal. Sedimentation rate was notably elevated at 48(normal 24) Echocardiogram demonstrated preservation of left ventricular size and ejection fraction without wall motion abnormality. Mild LVH present. Stable cardiomegaly. No reported pericardial effusion. Started on medication and condition rapidly improved. Quite comfortable at time of discharge. Continue indomethacin for two weeks with office F/U three weeks. [REDACTED]. DE 1, pp. 22-34.

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 performing SGA since April 2008. See finding of fact 6. The amount of monthly wages was computed to be approximately \$369 to \$602 per month. This does not equal the 2008 SGA amount of \$940 per month. 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 Claimant had some physical limitations on his abilities to perform basic work activities. See finding of facts 8-9. The medical evidence has established that Claimant has a physical impairment that has more than a minimal effect on basic work activities. The medical evidence did not establish a mental limitation. 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 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 physical impairments 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. In this matter, the medical records establish hepatomegaly, cervical spine degenerative disease and lumbar pain and some restriction of movement.

Appendix 1 of Subpart P of 20 CFR, Part 404. Listing 4.00 *Cardiovascular System*. The medical records established the Claimant's blood pressure was under control with medications. The medical record established cardiomegaly but this condition was stable and ejection fraction was within normal limits. See finding of fact 8-9. There were no medical records after September 2007. There were no medical records establishing long lasting symptoms of the stroke (CVA) or a second occurrence of a CVA.

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 the medical records lacked the necessary listing level criteria and severity; and there were no medical records after September 2007.

Further, the medical records available indicate the Claimant has been non-compliant with prescribed medications; and at hearing the Claimant testified to continued consumption of beer. The medical records in September 2007 report: "Smokes 1-1 and one-half pack of cigarettes a day a day does drink about a six-pack of beer daily." DE 1, page 20. 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 bus driver and more recently as a laborer, a . strenuous type work. The Claimant testified he cannot stand 8 hours a day, has shortness of breath and episodes of chest pain/pressure. There were no medical records confirming these symptoms. The undersigned accepts this testimony; and decides 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 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; the Claimant has been working. 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-three 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 impairments meet the disability requirements under SSI disability standards, and prevent other medium employment 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.

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

Date Signed: _____

Date Mailed: _____

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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