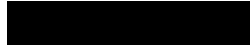


STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Claimant

Reg. No.: 2008-16340

Issue No.: 2009, 4031

Case No.:

Load No.:

Hearing Date:

October 9, 2008

St. Joseph 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 9, 2008. The Claimant and his friend appeared at the Department of Human Service (Department) in St. Joseph County.

The closure date was waived to obtain additional medical information. The State Hearing Review Team (SHRT) reviewed and denied the application. 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 November 20, 2006 the Claimant applied for MA-P and SDA.
- (2) On January 16, 2007 the Department denied the application: and on March 25, 2009 the SHRT denied the application finding the medical evidence indicated a non-severe impairment per 20 CFR 416.920(c).
- (3) On January 16, 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-six years of age.
- (5) Claimant completed grade 12; and can read and write English and perform basic math.
- (6) Claimant last worked in 2000 as a welder for 17 years and the plant closed.
- (7) Claimant has alleged a medical history of three strokes with decreased memory, loss of strength in right hand/wrist, left carpal tunnel syndrome, shortness of breath due to heart murmur described to him as a "time bomb", cirrhosis of the liver.
- (8) November 2006, in part:

INDEPENDENT PSYCHIATRIC EXAMINATION: History: HT: 64", WT: 170, arrived alone after driving own car two miles and was own historian to today. Not prescribed any medications. Last doctor he saw was in 2000 for his hands. Smokes one pack of cigarettes a day. Last drank alcohol two days ago described as occasional with friends; and denies abuse. Lives alone.

Behavioral Activities: independent in ADLs, can clean his house cook, shop, drive, bank, pay bills, lives rent free, girlfriend pays his cell phone bill. Marginal hygiene, appropriate clothing, long hair and beard. MENTAL STATUS: stream of mental activity, Mental Trend/Thought content, Sensorium: orientations, information, simple calculations, similarities and differences, Judgment: [All within normal limits.] Except minor memory problems one of three objects. Difficulties appear physical and may benefit from referral to [REDACTED]. No Axis I or II Diagnosis. [REDACTED] Department Exhibit (DE) 1, pp. 16-19.

November: INDEPENDENT MEDICAL EXAMINATION:
Smokes I pack mini cigars daily for 35 years. Alcohol dinks 12
beers per week.

PHYSICAL EXAMINATION: Appearance/Mental Status, Vital
Signs, Visual Acuity, Skin, Eyes/Ears, Neck, Chest, Heart,
Abdomen, Vascular, Musculoskeletal, Range of motion all Joints,
Neuro, Gait: [Within normal limits.]

Except insight and judgment appear mildly impaired. Left carotid
bruit, prolonged expiratory phase with diffuse inspiratory and
expiratory wheezing. Grade III/VI aortic systolic murmur and
obesity with mild difficulty squatting. History of overuse arthritis
of both hands [REDACTED]. [REDACTED]
[REDACTED]. DE 1, pp. 11-15

(9) November 2008, in part:

No treatment for some time, no medications and no need for
assistive device. States history of alcoholic liver disease but states
abstinent for three months. Lives with mother and able to drive and
can do household chores, ride lawn mower and able to shop,
climbs stairs. Denies problems sitting and standing. Can walk one-
half mile and lift 30 pounds. Quit smoking four months ago.

PHYSICAL EXAMINATION: Cooperative, follows commands,
insight judgment, memory intact, Provides good effort. Vital Signs,
Blood Pressure, Visual Acuity, Ears/Eyes, Neck, Heart, Abdomen,
Vascular, Musculoskeletal, Range of Motion all Joints,
Neurological: [All within normal limits.]

Except mild bronchial breath sounds lungs but clear to auscultation
and there is diminished range of motion right wrist and this
appears stable. No findings of cirrhosis but abdomen is enlarged
and difficult to ascertain. [REDACTED]. [REDACTED]
[REDACTED]. DE 3, pp. 1-5.

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 2000. 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 physical and possibly mental limitations that would impact basic work activities more than in a minor way and the impairments have lasted 12 months. See finding of facts 8-9.

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 “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.

The medical evidence establishes in November 2006: insight and judgment appear mildly impaired. Left carotid bruit, prolonged expiratory phase with diffuse inspiratory and expiratory wheezing. Grade III/VI aortic systolic murmur and obesity with mild difficulty squatting. History of overuse arthritis of hands. All in the opinion of [REDACTED] See finding of fact 8.

The same doctor in November 2008, [REDACTED] after examination of the Claimant found a nearly normal examination. See finding of fact 9. The undersigned finds a major problem between the two examinations. But does not have enough medical records to find the Claimant meets any of the listings of Appendix 1 of Subpart P of 20 CFR, Part 404.

This Administrative Law Judge finds the Claimant is not presently disabled at the third step for purposes of the Medical Assistance (MA) program due to the lack of medical records establishing the intent and severity of the listings of Appendix 1 of Subpart P of 20 CFR, Part 404. 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/her 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 do not establish ambulation difficulties or dysfunction of the upper or lower extremities. But the Claimant has not worked since 2000 when he was a welder. Based on [REDACTED] November 2006 examination, the Claimant cannot return to past work due to aortic stenosis and breathing difficulties. Evaluation under step five will continue.

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 sedentary work because of the lack of established facts between [REDACTED] two very different examinations; one in November 2006 and the second November 2008. 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 fifty-six is considered an *Advanced Age*; a category of individuals age 55 and over. 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 201.06, for age 55 and over; education: high school graduate or more; previous work experience, skilled or semi-skilled—skills not transferable; the Claimant is "disabled" per Rule 201.06.

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 medical evidence to support a finding that Claimant's impairments meet the disability requirements under SSI disability standards, and prevents return to past relevant work or other work for ninety days. This Administrative Law Judge finds the Claimant is "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 the State Disability Program.

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

Accordingly, The Department is ORDERED to initiate a review of the November 2006 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 April 2010 but avoiding a review with [REDACTED]

This Judge would recommend the Claimant see a doctor as soon as possible regarding [REDACTED]

[REDACTED] November 2006 evaluation.

/s/

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

Date Signed: 04/29/09

Date Mailed: 04/29/09

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.

JREjlg

cc:

[REDACTED]