

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.: 2008-17147

Issue No.: 2009, 4031

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

June 23, 2008

Berrien County DHS (22)

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 23, 2008. The Claimant and his wife appeared at the Department of Human Service (Department) in Berrien County.

The closure date was waived to obtain additional medical information. An Interim Order was issued to obtain new medical records which were reviewed by the State Hearing Review Team (SHRT) who 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) In February 2008 the Claimant's benefits for MA-P and SDA were re-determined.
- (2) On March 24, 2008 the Department denied the application: and on October 6, 2008 the SHRT found the medical evidence established medical improvement and the ability to perform light work under Vocational Rule 202.13.
- (3) On March 27, 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-four years of age.
- (5) Claimant completed grade 12 and three years of college; and can read and write English and perform basic math.
- (6) Claimant last worked in 2005 as a carpenter for 15 years.
- (7) Claimant has alleged a medical history of problems with endurance, with thinking, with processing words and decreased concentration, short term memory loss and depression with chest pain and hypertension, breathing problems, right sided loss of sensation since a CVA in 2005.
- (8) May 2008, in part:

History of stroke in 2005. 2006 and 2007 medical records do not show the severity of the listings. The objective evidence did not meet listings: 11.04 or 4.04. In February 2007 the Claimant was continued under Listings 12.02, 11.04 and 4.04 but the medical evidence did not show the medical condition would meet the listings. Current medical evidence suggests the ability to perform at least simple, unskilled, medium work. SHRT. Department Exhibit (DE) 2, pp. 1-2.
- (9) March, April and June 2008, in part:

Adenoscan Cardiolute Stress: CONCLUSION: No EKG changes suggestive of ischemia with IV Adenoscan infusion. Evidence of Adenoscan induced mild anteroapical ischemia with fixed inferior wall defect. SPECT revealed normal left ventricular function with ejection fraction of 50%. [REDACTED].

History of myocardial infarction, abnormal stress test for Cardiac Cauterizations.

PHYSICAL EXAMINATION: Significant improvement since stroke in 2005. Has been doing well since 2006 cardiac cauterization but complained of dyspnea with heavy exertion and dizziness and passed out for short time. Continues to smoke and drink occasionally. Vital Signs, HEENT, Lungs, Extremities, Neurological: [Within normal limits.] Except for episodic dysarthria.

Cardiac Catherization: CONCLUSIONS: Mild coronary artery disease including proximal left anterior descending artery lesion. Spasm of posterior ventricular branch reversed with intracoronary of nitroglycerine. This was same vessel that developed spasm two years ago. Normal left ventricular function with ejection fraction of 60%. Continue aspirin, Toprol, Procardia, lovastatin and lisinopril; and must stop smoking. [REDACTED]

Rehabilitation Services:

April: Right upper extremity significantly impaired to almost absent to light touch, Right lower extremity impaired as well to knee and ankle. Right lower extremity range of motion moderately decreased. Present with decreased bilateral lower extremity strength right more than left. Decreased right upper extremity strength has fall risks due to deficits.

June: Treatments-10; Cancellation-4; Failed to Show-1. Reports long walk yesterday with occasional standing and seated rests. Feels he is improving. Relatively normal posture ambulated 350+ feet without assistive device and no loss of balance. Strength in hips, and knees: 4/4 to 5/5. Increased sway with left lower extremity stance. Function: use of upper extremity for transfers. Stairs up/down 15 steps with rail without assistive device and no low of balance. Needs strengthening of flexibility, truck and lower extremity, balance, gait training, has home exercise program. [REDACTED]

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 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 (6th Cir 1985).

In this case, the Claimant has presented medical evidence of physical limitations that are more than minimal and impact basic work activities. The impairments have lasted more than 12 months. There was no medical evidence supporting the Claimant's allegation of memory loss, or other mental dysfunctioning. 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 severity, intent and criteria of Appendix 1 of Subpart P of 20 CFR, Part 404, Listings 1.00 *Musculoskeletal system*; would be applicable to the medical facts of this matter but the medical records do not establish the intent and severity of the listings according to the severity requirements of 1.00Ba. What is significant in the medical evidence was a failure to medically follow up with treatment; and it appears the Claimant did not medically treat to enable him to return to work while on Medicaid.

The medical records of [REDACTED], note the Claimant failed to continue physical therapy: Patient was having prior treatment [here] but was trying to rehabilitate himself over the years [since 2005] but not for current conditions [2008]. See April 2008; [REDACTED]

[REDACTED] Further, the Claimant continued to smoke one pack of cigarettes a day, in spite of medical advice. See finding of fact 8-9. 20 CFR 416.930: Need to follow prescribed treatment:

(a) What treatment you must follow. In order to get benefits, you must follow treatment prescribed by your physician if this treatment can restore your ability to work, or, if you are a child, if the treatment can reduce your functional limitations so that they are no longer marked and severe.

(b) When you do not follow prescribed treatment. If you do not follow the prescribed treatment without a good reason, we will not find you disabled or blind or, if you are already receiving benefits, we will stop paying you benefits.

(c) Acceptable reasons for failure to follow prescribed treatment. We will consider your physical, mental, educational, and linguistic limitations (including any lack of facility with the English language) when determining if you have an acceptable reason for

failure to follow prescribed treatment. The following are examples of a good reason for not following treatment: . . . [Omitted.]

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 failure to follow prescribed treatment. 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 establish improvements in physical functioning. But the Claimant cannot return to past relevant work as a carpenter. See findings of fact 8-9.

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. 4—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 medical evidence to support a finding that Claimant’s impairments meet the disability requirements under SSI disability standards, and prevents return to other 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: 05/13/09

Date Mailed: 05/13/09

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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