

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.: 2008-17741

Issue No.: 2009, 4031

Case No.:

Load No.:

Hearing Date:

July 17, 2008

Kent 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 July 17, 2008. The Claimant and his step-mother appeared at the Department of Human Service (Department) in Kent County.

The record was left open to obtain additional medical information. The medical information was submitted to the State Hearing Review Team (SHRT) and the application was denied. 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) 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) The Claimant filed an application for MA-P and SDA on August 2, 2007.
- (2) On January 2, 2008 the Department denied the application; and on March 17, 2009 the SHRT guided by Vocational Rule 202.20 denied the application finding medical records established the ability to perform a wide range of unskilled light work.
- (3) On April 3, 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 forty-six years of age.
- (5) Claimant completed grade 11 and GED; and can read and write English and perform basic math.
- (6) Claimant last worked in March 2006, leaving due to an injury but was loading trucks with Hilo and truck mover and some years incarcerated before March 2006.
- (7) Claimant has alleged a medical history of coronary artery disease (CAD) with stent placement, right leg, rotator cuff surgical repair, hand and finger surgeries, and ankle injury with stiff walking; and denies mental impairments.
- (8) June 2008, in part:

Presented in May 2008 with chest pain and left AMA. Had abnormal dobutamine stress test and here for cardiac catheterization. Left main trunk was OK, OM1 prior stent and mild instent restenosis but no focal disease. LAD was normal; and in cranial views blockage appeared to be 70% lesion and stent placement was performed with good results. Left ventricular function was 35%. Vital signs: [Within normal limits.] Physical Examination: [Within normal limits.] and normal labs except elevated lipids. Medications: [REDACTED].

Department Exhibit (DE) pp. 167-177.

- (9) November 2008, in part:

To ER seen here multiple times in past with history of CAD, MI, asthma, elevated cholesterol and complaining of left sided back

pain. MRI showed mild disc bulge at L5-S1. Feels is urinary infection, denies radiating pain. Denies: Urinary frequency, loss of bowel or bladder control, abdominal pain, numbness and weakness of arms and legs. Reports he ran out of pain medicine. PHYSICAL EXAMINATION: Well nourished, no acute distress, Head, Eyes, ENT, mucous membranes, Cardiovascular, Lungs sounds, Abdomen, Extremities, Muscle strength and Sensation of both upper and lower extremities, Patellar reflexes, Back, Urinalysis: [All within normal limits.] Except reproducible pain on back one small spot left flank. Diagnosis: Flank pain of uncertain origin.

████████████████████.

Discharge home in stable condition after medication injection of ██████████ and prescription for ██████████
New Medical Information from SHRT, not numbered.

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 March 2006. Medical records in May 2008 indicate that the Claimant was on workman's compensation benefits for lower extremity work injuries. See Department Exhibit page 178. Without more information, the 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 sufficient medical evidence to support physical limitations that have more than a minimal effect on basic work activities; and the impairments have lasted 12 months.

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 physical impairment is “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 Claimant has CAD but this is being treated with medication and another stent was placed in June 2008. The Claimant has not had any other myocardial infarctions. In November 2008, cardiovascular clinical examination was within normal limits. See finding of fact 9.

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 Disorders*. There were no medical records that established severe loss of physical function under 1.00Ba. The Claimant has near normal physical functioning in November 2008. See finding of fact 8-9.

This Administrative Law Judge finds the Claimant is not presently disabled at the third step for purposes of the Medical Assistance (MA) program. 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 evidence supports near normal functioning, both physical and mentally but subjective complaints of pain were made in November 2008. On hospital clinical examination, there was no physical function restrictions placed on the Claimant's ability to return to work. The examining physicians emphasized the Claimant's excessive requests for pain medications. See finding of fact 9.

The Claimant is ambulatory, independent in ADLs and drives a vehicle. These actions demonstrate function of both physical and mental alertness, concentration and reasoning skills along with upper and lower extremity function. The Claimant does not need to use a cane. The undersigned agrees with the Claimant that he cannot return to past work due to the requirement of having to lift up to 50 pounds at the 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 sedentary work. 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 forty-six is considered a *younger individual*; a category of individuals age 45-49. 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 201.21, for younger individual, age 45-49; education: high school graduate or more; previous work experience, skilled or semi-skilled, skills not transferable; the Claimant is “not disabled” per Rule 201.12.

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 other work activities 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 State Disability Assistance 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: 05/05/09

Date Mailed: 05/05/09

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

cc:

