

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. 2008-17762

Issue No. 2009

Case No:

Load No.

Hearing Date:

October 2, 2008

Wayne 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 2, 2008. The Claimant and his representative ██████████ appeared at the Department of Human Services (Department) in Wayne County ██████.

The record was left open to submit additional medical information. The closure date was waived on the record. The medical information was submitted to the State Hearing Review Team (SHRT) and the SHRT requested more medical information. This matter is now before the undersigned; who finds the medical information sufficient to render a final decision.

ISSUE

Whether the Department properly determined the Claimant is "not disabled" for purposes of Medical Assistance based on disability (MA-P) program and retroactive MA-P for the months of July, August and September 2007?

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 23, 2007 the Claimant applied for MA-P and retroactive MA-P.
- (2) On January 15, 2008 the Department denied the application; and on January 27, 2009 the SHRT denied the application finding insufficient medical records.
- (3) On April 10, 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-nine years of age.
- (5) Claimant completed grade 9 and GED; and can read and write English and perform basic math skills.
- (6) Claimant last worked in 1995; and was assigned light duty assignments due to physical condition while incarcerated.
- (7) Claimant has alleged a medical history of shortness of breath on exertion every day, hepatitis B 1992, hepatitis C 2007, hypertension, episodic headaches with loss of concentration; and GSW with five surgeries between 1978-1998 leaving gastric adhesions.

(8) July 2007, in part:

HISTORY: Admitted with history of repeated bowel obstruction. History of lysis of intestinal adhesions in 1984, 1989 and 1996 after 1970 exploratory laparotomy following GSW. History of gall bladder removal, hypertension and high cholesterol and breathing problems. Admits last use of marijuana was five weeks ago. Denies alcohol.

X-ray abdomen shows unremarkable cardiomedastinal silhouette and clear lungs. Diagnosis: early partial bowel obstruction. Vital signs stable. Left central line was placed. No surgical intervention

needed at this time. Not acute abdomen will treat conservatively and monitor abdominal testing results. Keep NPO. [REDACTED] medications administered. History of hepatitis B and C. But is not jaundiced and does not show any signs or symptoms of hepatitis. Physical examination unremarkable, lungs clear and gait normal. Final abdomen test results: surgical sutures identified in abdomen. Gas pattern is non-specific. No free air identified. Department Exhibit (DE) 1, pp. 7-27

(9) July to October 2007, in part:

August: CURRENT DIAGNOSIS: COPD, multiple small bowel obstructions, per patient: hepatitis C, hypertension, GERD.

Vital signs: Height 5'9", Weight 156, BP 163/102, Visual Acuity (Best corrected) 20/30 right, 20/40 left.

NORMAL FINDINGS: General, HEENT, Cardiovascular, Musculoskeletal, Neuro, Mental.

FINDINGS: Respiratory: wheezing. Abdomen: multiple scars. Positive slight tenderness. Soft, Bowel sounds.

PHYSICAL LIMITATIONS: Limited.

No Lifting/carrying; standing and/or walking less than 2 hours in 8 hour day; sit about 6 hours in 8-hour day. Assistive devices are not medically required; use of both hands/arms for simple grasping, reaching, pushing/pulling, fine manipulating; use of both feet/legs for operating foot controls. Findings: pain in abdomen when lifting/bending. MENTAL LIMITATIONS: None. Can meet own needs in home. Current medications: [REDACTED], [REDACTED]

July to October: August: follow up to July 2007 hospitalization: Small Bowel Obstruction (SBO) resolved. [REDACTED] prescribed. Hypertension [REDACTED] prescribed. ASA prescribed. GERD Nexium prescribed. Physical Exam: H/Neck, Eyes, CV, Resp: Normal. GI multiple surgical scars soft, slight tenderness. October: BP 142/92. Respiratory: wheezes. Respiratory normal in July, August and September. Normal CV and GI. Hypertension: increase [REDACTED] COPD worsening. [REDACTED], [REDACTED]. [REDACTED]. Claimant Exhibit B, pp. 1-7

(10) October 2008, in part:

Pulmonary Function Test (PFT) results: Height: 68", Weight 150 pounds.

Pre-Med FVC—4.10; FEV1—2.22. No improvement following medication. Suggestive of COPD. [REDACTED] Claimant Exhibit A, pp. 1-7.

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. 20 CFR 416.920(b). In this case, under the first step, the Claimant testified to not performing SGA since 1995. But while incarcerated, the Claimant testified to

performing light duties. There was no additional evidence. The undersigned decides 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 (6th Cir 1985).

In this case, the Claimant has presented medical evidence to support a finding that Claimant has more than slight abnormalities that are physical limitations on his abilities to perform basic work activities. See Finding of Facts 8-10. The medical evidence has established that Claimant has physical limitations that have more than a minimal effect on basic work activities. There was no medical evidence of a mental impairment that would affect performance of basic work activities. 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 physical 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 July 2007 medical records document admission for abdominal pain. While hospitalized the abdominal pain was determined not to be acute; and no surgical procedures were performed in the gastrointestinal tract. By July 2007, [REDACTED] (sic) the intestinal obstruction had resolved. Thus, as a medical impairment, the condition will not be considered disabling under the listings of Appendix 1. But during that hospitalization, the Claimant gave a history of COPD. On physical examination the Claimant's lungs were clear. But Appendix 1, Listing 3.02 and 3.04, *Respiratory System*. Even though the PFT examiner stated "suggestive of COPD" there were other medical record indicators that the Claimant's breathing was near normal or normal. See Finding of Facts 8-10. Especially noted were normal chest test results while hospitalized in July 2007. See Finding of Fact 8.

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 physical impairment does not meet the intent or severity of the listings. 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 in 1995; and light duty while incarcerated. At hearing the Claimant testified to sitting and standing for one hour, walking for thirty minutes; and lifting less than 40 pounds with shortness of breath. The Claimant was independent in ADLs and gait was normal. At hearing in demonstration of lifting, the Claimant stated a small TV. The undersigned notes Dr. Aprohamich (sic) prescribed no lifting due to abdominal pain but did not place limits on pushing/pulling or reaching; and the limitations did not mention shortness of breath. In light of inconsistencies, the credibility of this doctor's opinion is questionable. But the undersigned decides to continue to step five because there was no factually developed real past relevant work described.

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 functional capacity,” defined simply as “what can you still do despite you 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 limitations.

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 entire record of thoroughly reviewed medical evidence; i.e. no breathing problems in July 2007 or in the July to September 2007 medical records of health care [See Finding of Fact 9], 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-nine is considered *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 Light Work as a Result of Severe Medically Determinable Impairment(s), Rule 202.01, for advanced age, age 55 or over; education: limited or less; previous work experience, unskilled or none; the Claimant is “disabled” per Rule 202.01.

It is the finding of the undersigned, based upon the medical data and hearing record that Claimant is “disabled” at the fifth step.

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 retroactive Medical 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 October 2007 application to determine if all other non-medical eligibility criteria are met. The Department shall inform Claimant and the representative 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 February 2010.

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

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

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

cc: [REDACTED]