

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.: 2008-18698

Issue No.: 2009

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

September 3, 2008

Wayne County DHS [REDACTED]

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 September 3, 2008. The Claimant and his representative [REDACTED] appeared at the Department of Human Service (Department) in Wayne County.

The record was left open to obtain additional medical information. The new medical records were reviewed by the State Hearing Review Team (SHRT) and the application was denied. The matter is now before the undersigned for a final decision.

ISSUE

Whether the Department properly determined the Claimant was "not disabled" for purposes of Medical Assistance based on disability (MA-P), retroactive MA-P for the months to August 2007 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 19, 2007 the Claimant applied for MA-P and SDA.
- (2) On February 20, 2008 the Department denied the application; and on March 19, 2008 the SHRT denied the application finding insufficient evidence.
- (3) On April 8, 2008 the Claimant filed a timely hearing request to protest the Department's determination.
- (4) Claimant's date of birth is [REDACTED]; and Claimant is forty years of age.
- (5) Claimant completed grade 11; and can read and write English and perform basic math. Department Exhibit (DE) 1, p. 15.
- (6) Claimant was last employed in 2002 working for a temporary agency wiping handrails; and from 1993 to 2000 worked at [REDACTED] as a janitor; and has done dishwashing, shipping/packing, load/unloading, machine operator
- (7) Claimant has alleged a medical history of [REDACTED] fall injury to neck/thoracic spine with decreased range of motion, numbness and tingling in fingers, back spasms, pain; and depression without current treatment.

- (8) [REDACTED] in part:

[REDACTED] TWO WEEK HOSPITALIZATION:  
CONDITIONS/DIAGNOSES: Myxedema coma. Hypercarbic respiratory failure. Pericardial effusion. Panhypopituitarism.  
Secondary Complications: glottic web and UTI resolved.

HISTORY: Pituitary tumor removal ten years ago. Here for management of large pericardial effusion. C/O shortness of breath and abdominal pain. Medications at home: Tylenol 3, Naprosyn, albuterol inhalers, Lasix and Lovastatin. Not on hormone supplement. Reported by father that progressively after tumor

removal, he became slow, fatigued and had behavioral changes. Several medical treatments were necessary. Has cardiomegally.

After medical treatment: MRI revealed no acute abnormalities. To F/U with [REDACTED] for respiratory failure. Kept on Bi-pap and to continue use at home. Was able to urinate on own subsequently. No signs of cardiac tamponade. Ambulating with no distress or difficulties. PT recommends a cane and future PT. To F/U with internal medicine clinic. Discharged with medications: Albuterol puffs, Hydrocortisone, Lasix, Lovastatin, Synthroid. [REDACTED] DE 1, pp. 50-52.

[REDACTED] F/U after recent hospitalization. States has been doing well and father now living with him. States taking levothyroxine and hydrocortisone. Denies smoking, alcohol and drug use. Physical Examianation: [Within normal limits.] Except abdomen distended and morbidly obese. HT 67". WT 260 pounds. BMI 40.4. RTC two weeks [REDACTED]. DE 1, PP. 60-61

[REDACTED] F/U: Complicated hospitalization with today C/P dyspnea on walking but not at rest. Lower extremity edema. Denies pain. Dyspnea should improve with continued throid replacement and Lasix. Encouraged to exercise for obesity. [REDACTED] DE 1, pp. 67-68.

(9) [REDACTED], in part:

Office Note: F/U: No difficulty with breathing or talking and has been doing much better. States taking thriod medication. Still wearing mask for BICAP/CPAP at night. Diagnostic laryngoscopy was done with demonstrated some lingual tonsillar hypertrophy. No there gross abnormalities. No reflux changes seen. Glottic web resolved. Continue to wear CPAP or BIPAP mask. [REDACTED] Claimant Exhibit B, 4-5.

F/U: Did not change cortef dose. He was confused. Father is present. FT4 elevated. Explained to father/patient about dosage. F/U six weeks. Physical Examination: [Within normal limits.] Except distended abdomen, trace pitting edema lower extremity. Morbid obesity. [REDACTED]. Claimant Exhibit B6

(10) [REDACTED], in part:

[REDACTED]: Recommend legs elevation when in a sitting position.

CURRENT DIAGNOSIS: Panhypopituitaryism. Obesity.  
Multifactorial dyspnea; Edema.

NORMAL EXAMINATION AREAS: HEENT; Abdominal,  
Musculoskeletal, Neuro, Mental.

FINDINGS: General: obesity. Respiratory: dyspnea and appears  
dysneatic with exertion. Cardiovascular: distant heart sounds. Mild  
anemia. Low testosterone. Free T4 low.

CLINICAL IMPRESSION: Stable as of last visit.

PHYSICAL LIMITATIONS: Limited, expected to last 90 days. no  
assistive devices are needed; use of both hand/arms for simple  
grasping, pushing/pulling, reaching, fine manipulating; use of both  
feet/legs for operating foot controls. MENTAL LIMITATIONS:  
Not evlauated. Medications: albuterol, lovastatin, androgen,  
[Illegible] furoscemide, hydrocortisone, levo . . [Illegible],  
potassium. [REDACTED]. Claimant  
Exhibit B2-3.

[REDACTED]: Pulmonary Function Test: Best Value pre-med: FVC—  
2.25; FEV1—2.09. Moderately severe restriction. Post med: no  
significant improvement. Height: 67” DE N2, pp. 1-6.

#### 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 400.10, *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 CFR 416.905

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) The Claimant testified that to not performing SGA since 2002. Therefore, the Claimant is not eliminated from MA-P at step one; further review of the claim is necessary.

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 (6<sup>th</sup> 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 (6<sup>th</sup> 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 of physical limitations that are more than minimal and effect basic work activities. The medical evidence has established that Claimant has limitations that have more than a minimal effect on basic work activities. Claimant’s impairment has lasted continuously for twelve months or more. 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 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 impairment is a “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. The undersigned’s decision was based on medical records, beginning [REDACTED], report of dyspnea on exertion under Listing 3.00 *Respiratory System*.

3.02 *Chronic Pulmonary Insufficiency* due to any cause, with the FEV1 equal or less than the values in table I corresponding to the individual's height without shoes; OR Chronic restrictive ventilatory disease, due to any cause, with the FVC equal to or less than the values specified in table II corresponding to the individual's height without shoes. The Claimant's results were FEV1—2.09 or above 1.35 of the table; and FVC—2.25 or above the 1.55 of the table.

The other conditions in [REDACTED] have been medically treated. There were no other significant impairments except some lower extremity edema. [REDACTED] Moore recommends elevating both legs when sitting but did not limit upper or lower extremity use. See finding of fact 10.

In this case, for the reasons set out above, and because the medical records do not establish the intent and severity of the listings; 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 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 Claimant's last work was in 2002; and requiring standing, bending, lifting and other exertion actions. Given the claimant's dyspnea on exertion, the undersigned decides the Claimant cannot return to past relevant work. There were facts in the medical record that established serious physical difficulties with the Claimant's physical ability to function, as noted dyspnea on exertion, morbid obesity, cardiomegally, central hypothyroidism and adrenal

insufficiency. Given the serious types of conditions established in the medical records and the Claimant's young age, 40 years, the undersigned decides the Claimant cannot perform any other work; and is "disabled" at step four.

It is the finding of the undersigned, based upon the medical data and hearing record that Claimant is "disabled" at the fourth 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 sufficient evidence to support a finding that Claimant's impairments meet the requirements under SSI disability standards, and prevent other sedentary work for ninety days. This Administrative Law Judge finds the Claimant is presently "disabled" for purposes of the SDA program.



