

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: 2008-20771
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 10, 2008
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Rhonda P. Craig

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, an in-person hearing was held on September 10, 2008. Claimant was represented by [REDACTED] with [REDACTED]. The record closed on November 7, 2008.

ISSUE

Is claimant disabled for the purposes of the Medical Assistance and State Disability Assistance 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) Claimant applied for Medical Assistance and State Disability Assistance benefits on January 11, 2008. Claimant requested Medical Assistance retroactive to October 2007.

(2) Claimant's impairments have been medically diagnosed as hypertension, deep vein thrombosis, hiatal hernia (moderate sized), right hemispheric infarct, arthritis (neck and back), reflux disease, and history of gastritis.

(3) Claimant's physical symptoms are constant severe pain in the left shoulder, left hip, left leg and back despite medication, frequent neck pain, chest pain (twice a week), daily swelling of the legs and numbness in the hands.

(4) Claimant's impairments have lasted or will last for a continuous period of not less than 12 months.

(5) Claimant is 52 years of age.

(6) Claimant has a high school education.

(7) Claimant has employment experience as a press operator in a factory.

(8) Claimant has significant limitations on physical activities involving sitting (no more than 15 minutes at a time), standing (no more than 5 minutes at a time), walking (no more than one-fourth of a block at a time), bending, lifting and stooping. Claimant has difficulty gripping and grasping things with his hands and fingers. Claimant has used a cane since [REDACTED]. He cannot walk far without it. Claimant has a limited range of motion of the lumbar spine.

(9) The department found that the claimant was not disabled and denied claimant's application on February 15, 2008.

(10) New medical evidence (marked NEW in the file) was received and entered after the hearing. It was submitted to the State Hearing Review Team for reconsideration. The State Hearing Review Team again determined that claimant was not disabled for the programs.

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).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *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).

The Department of Human Services conforms to state statute in administering the State Disability Assistance program.

2000 PA 294, Sec. 604, of the statute states:

Sec. 604. (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempted from the supplemental security income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

- (a) A recipient of supplemental security income, social security, or medical assistance due to disability or 65 years of age or older.
- (b) A person with a physical or mental impairment which meets federal supplemental security income disability standards, except that the minimum duration of the disability shall be

90 days. Substance abuse alone is not defined as a basis for eligibility.

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...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

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

Here, claimant's impairment or combination of impairments is severe but does not meet nor is it the equivalent of a listed impairment. Claimant is also unable to do past work. Therefore, the determination of disability will be based on claimant's residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

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. 20 CFR 416.967(a).

The medical evidence indicates that claimant may no longer be able to perform his previous work, which was medium labor. Claimant now appears to have the residual functional capacity to perform work on no more than a sedentary level. At the hearing claimant testified that he has had several surgeries. He indicated that he had knee surgery on his left knee between [REDACTED]. He has had [REDACTED] surgeries on his neck in [REDACTED]. He underwent surgery on his left shoulder in [REDACTED]. He had a laminectomy surgery in [REDACTED]. He indicates that he was diagnosed

with carpal tunnel syndrome of his left hand in [REDACTED]. In a report dated [REDACTED] [REDACTED] the physician noted that claimant's lower back movements were markedly restricted to about 50% of the normal range. Claimant complained of neck pain. The physician noted that his neck movements were restricted to 60 to 65% of normal range. His left knee movements are associated with pain. There was significant crepitus. His left knee movements were restricted to about 65% of normal range. X-rays of claimant's spine shows that there was a fusion of vertebral bodies of C5 and C6 with anterior plate and screws. There was compromise of the left intervertebral foramina at the C3-C4 level. The physician noted mild to moderate degenerative joint disease of the cervical spine at C4-C5, C6-C7 and C7-T1. Claimant complains of constant severe pain despite medication in his left shoulder, left hip, left leg and back and frequent pain in his neck. As a result of this pain claimant testified that he is severely limited in the amount of sitting, standing, walking, bending, walking and stooping he can perform.

This Administrative Law Judge does take into account claimant's complaints of pain in that the diagnoses do support the claims. Subjective complaints of pain where there are objectively established medical conditions that can reasonably be expected to produce the pain must be taken into account in determining a claimant's limitations. *Duncan v Secretary of HHS*, 801 F2d 847, 853 (CA6, 1986); 20 CFR 404.1529, 416.929.

At the hearing a witness testified that claimant has difficulty walking, squatting and standing. He is in a lot of pain when walking. He needs help getting dressed and must use a shower chair to bathe. Considering the medical evidence and the testimony presented it appears that claimant has the residual functional capacity to perform work on no more than a sedentary level. Claimant is an individual approaching advanced age. 20 CFR 416.963. Claimant has a high school education 20 CFR 416.964. Claimant's previous work was semi-skilled. However

his work as a press operator may not be transferable to sedentary types of jobs. Federal Rule 20 CFR 404, Subpart P, Appendix 2 contains specific profiles for determining disability based on residual functional capacity and vocational profiles. Under Table 1, Rule 201.14 claimant is disabled for the purposes of the Medical Assistance and State Disability Assistance programs.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decidesthat the claimant is medically disabled under the Medical Assistance and State Disability Assistance programs as of October 1, 2007. Therefore, the department is ordered to initiate a review of the application of January 11, 2008, if not done previously, to determine claimant's non-medical eligibility.

The department shall inform the claimant of the determination in writing. The case shall be reviewed in December 2009.

/s/ _____
Rhonda P. Craig
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: February 4, 2009

Date Mailed: February 6, 2009

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.

RC/sd

cc:

