

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.: 2008-22212  
Issue No.: 2009, 4031  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date:  
December 1, 2008  
Oakland County DHS (2)

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, the Claimant appeared by telephone from South Carolina and [REDACTED], Court Reporter certified in South Carolina, verified the Claimant's identity. The Claimant's representative, [REDACTED] appeared in person at a hearing held on December 1, 2008 at the Department of Human Service (Department) in Oakland County.

The closing date was waived. Additional medical records were received and were reviewed by the State Hearing Review Team (SHRT). SHRT denied the application. The 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), retro MA-P for the months of June, July and August 2007 and State Disability Assistance (SDA) programs for a closed time period of June 2007 to June 2008?

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 September 23, 2007 the Claimant applied for MA-P, retroactive MA-P and SDA.
- (2) On March 4, 2008 the Department denied the application; and on March 25, 2009 the SHRT denied the application finding the medical records supported an ability to return to past relevant work.
- (3) On May 29, 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 sixty-one years of age.
- (5) Claimant completed grade 12 in Jordan, came to reside in the US in 1986; and alleges using a computer to translate English but the file contains several documents written in English signed by the Claimant giving authorization for representation and disclosure and a Michigan driver's license indicating the ability to read and write English. Department Exhibit (DE) 1, pp. 8-9.
- (6) Claimant last worked full-time October 2007 as a tailor who owned his own tailor shop for 20 years.
- (7) Claimant has alleged a medical history of blood clots, diabetic neuropathy with sores in left leg/foot, hypertension, breathing problems, back pain and HIV/Hepatitis B.
- (8) June, July, August and December 2007, in part:

June: F/U of recent aortofemoral bypass performed [REDACTED]. Doing quite well and no significant rest pain or claudication. Some persistent left lower extremity edema. Abdomen, groin incision and pulses: [Are within normal limits.] DVT scan was unremarkable. P/O has significant pitting edema left lower extremity. In terms of left lower extremity edema; is believed to be

related to lymphatic disruption from time of his groin exposure [Surgery]. Compression stocking are recommended to resolve for postoperative inflammatory changes and he will remain on antiplatelet agent lifelong. [REDACTED], MD. DE 1, pp. 19-20.

July: F/U Physical Examination: Abdomen, incision, femoral incision, pulses: [all within normal limits.] C/O left ankle and foot pain may be neuropathic in origin and he has been on Neurotin. Will try Lyrica; and this will be up to you. May be musculoskeletal pain but do not suspect related to surgery and recommend physical therapy. Small prescription of Vicodin will be tried. Encouraged to eat a balanced diet. Return in December 2007. [REDACTED]. DE 1, pp. 14-15.

August: CURRENT DIAGNOSIS: Peritoneal vascular disease, Diabetes, Hypertension, Neuropathy, hypercholesteremia.

NORMAL EXAMINATION AREAS: General; HEENT; Respiratory; Cardiovascular, Abdominal, Mental.

FINDINGS: Musculoskeletal: pain B/L lower extremity chronic. Neuro: decreased sensitivity [Illegible].

CLINICAL IMPRESSION: Improving.

PHYSICAL LIMITATIONS: Lifting/carrying up to 10 pounds 1/3 of 8 hour day, never 20 or over; stand and/or walk less than 2 hours in 8 hour day; no assistive devices are needed; use of both hand/arms for simple grasping, reaching, pushing/pulling; no use of either feet/legs for operating controls. Can meet own need in home. MENTAL LIMITATIONS: None.

Medications: Gilioible, metropolol, ACA GL, lisinopril, sturvaxide (sic) Lyrica. [REDACTED], MD. DE 1, pp. 12-13.

December: INDEPENDENT MEDICAL EXAMINATION: C/O pain over sole of left foot aggregated by walking about half block at street level and eases with 20 minutes rest; and numbness over sole of foot.

States history: Memory is good. No weakness, dizziness, tingling or involuntary movements. Known diabetic and takes oral medications and diabetic diet. Blood sugars 82. No itching, sweating but nocturia. No history of ulcerations, gangrene, hypoglycemia, ketoacidosis or thyroid problems. Right eye surgery for cataract. No pain, limitations of movement or swelling in any joint.

PHYSICAL EXAMINATION: Vital signs: WT 144, HT 63", BP 140/90, 138/70. Vision without glasses: right eye 20/20, left eye 20/40. Fundi, HEENT, Neck, CVS, Chest, Abdomen, Skin, Extremities, Pulses, Spine, Bones & Joints, Nervous system: [All within normal limits.] Except: right lower extremity pulses not palpable. Pain over toes left foot possibly tendonitis. Possible diabetic neuropathy toes left foot. Doppler test: no evidence of peripheral vascular disease. [REDACTED]. DE 1, pp. 5-7.

(9) March 2008, in part:

Elective Outpatient Surgery: C/O multiple bulges of abdominal wall. He desires to have the repaired. [REDACTED], MD. Claimant Exhibit C, pp. 1-2.

(10) April 2008, in part:

Admitted for shortness of breath, which started yesterday. Smokes 1-2 packs of cigarettes a day. Vascular: denies leg edema, claudication, varicose veins. Musculoskeletal: denies any muscle weakness, pain in joints, and decreased range of motion, swelling and arthritis. Neurological: left foot numbness with tingling but right foot normal. Denies tremor, seizures and blackouts. Denies past pneumothorax, asthma and COPD. Tests revealed right sided pneumothorax, which was treated with chest tube and resolved. Discharged without restrictions [REDACTED], MD. Claimant Exhibit B, pp. 1-16.

#### 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, Claimant testified to working as a tailor from June 2007 through October 2007 but not earning wages from this employment. 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 (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).

The medical evidence has established that Claimant has a physical impairment that has more than a minimal effect on basic work activities. There were no medical records establishing mental impairments that prevented basic work activities. It is necessary to continue to evaluate the Claimant’s impairments under step three.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant’s physical and mental 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 this matter, the medical records establish normal heart function post operative aortafemoral bypass with diagnoses of vascular disease, diabetes,

hypertension, neuropathy, hypercholesteremia all being medically treated. See finding of facts 8-10. Dr. Thabolingam opined that all the conditions were improving; and vital signs were stable.

Appendix 1 of Subpart P of 20 CFR, Part 404 applicable were listings were reviewed and after reviewing the criteria of the listings, the undersigned finds the Claimant does not meet the listing requirements because there was no medical evidence establishing the severity and intent of the listings

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. 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 as a tailor and owning a tailor shop. The SHRT decided the Claimant can return to this past relevant work. What is noted here is a lack of duration for physical limitations due to the original claims of vascular disease, diabetes, hypertension, neuropathy, and hypercholesteremia, which were all being medically treated. [REDACTED]. [REDACTED] opined that all the conditions were improving; and vital signs including blood pressure, were stable. See finding of facts 8-10.

The elective surgery of [REDACTED] cannot be added to meet duration; and the claim of breathing problems in [REDACTED] which were of acute origin for 2-3 days and cannot be added to meet duration. The hernia repair was elective not acute and the breathing problems did not occur in the medical records in [REDACTED]. Thus the elective hernia repair, the breathing problems, HIV/Hepatitis B and subsequent medical conditions cannot be tacked onto and make duration.

Severe impairments lasting less than 12 months cannot be combined with successive unrelated impairments to meet the duration requirement.” Social Security Ruling (SSR) 82-52.

It is the inability to engage in SGA because of the impairment that must last the required 12-month period. Adjudication on the basis of insufficient duration indicates a claim must be denied. Thus the undersigned agrees with SHRT in finding the Claimant can return to past relevant work as a tailor and is “not disabled’ at step four.

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 evidence to support a finding that Claimant's impairments meet the disability requirements under SSI disability standards. 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/  
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Judith Ralston Ellison  
Administrative Law Judge  
For Ishmael Ahmed, Director  
Department of Human Services

Date Signed: 05/14/09

Date Mailed: 05/14/09

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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