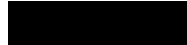


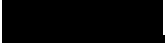

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Claimant

Reg. No.: 2008-22246
Issue No.: 2009, 4031
Case No.: 
Load No.: 
Hearing Date:
July 17, 2008
Calhoun County DHS (21)

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 ex-wife appeared at the Department of Human Service (Department) in Calhoun County

The record was left open to obtain new medical information. An Interim Order was issued for additional medical information; and no new medical information was received. The record closed. 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 the months of January 2008 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) The Claimant filed for MA-P and SDA on April 10, 2008 with previous disability applications as far back as 1997.
- (2) On May 16, 2008 the Department denied the application; and on June 18, 2008 the SHRT determined from the medical records the ability to return to other light work by Vocational Rule 202.17
- (3) On May 28, 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-eight years of age.
- (5) Claimant completed grade 12; and can read and write English and perform basic math as evidence by Department Exhibit (DE) 1, pp. 2, 169 and 258.
- (6) Claimant last worked in 2006 for two weeks; and prior was in construction/journeyman carpenter.
- (7) Claimant has alleged a medical history of coronary artery disease with heart attack in [REDACTED] and stint placement, job injury to back, hernia and painful bending with Bipolar disorder diagnosed ten years ago.
- (8) [REDACTED], in part:

CARDIOLOGY CONSULT: C/O left sided intermittent chest pain and shortness of breath past few weeks and precipitated by mild exertion and relieved by rest. No radiation of pain. Medications: Amitriptyline, Lovastatin, Ranitidine, Theophylline, HCTZ. PHYSICAL EXAMINATION: BP 140/100, Head, ENT, Eyes, Neck, Lungs, Heart, Abdomen, Extremities, And Central Nervous System: [All within normal limits.] EKG: non-specific ST-T wave abnormalities. Recommend Cardiac catheterization. [REDACTED]
[REDACTED]. DE 1, pp. 234-235

CARDIAC CATHERIZATION: Right coronary artery where previous stent was placed is 100% occluded. Other arteries were normal. Left ventriculogram shows inferobasal hypokinesia with ejection fraction of 45% suggesting mild LV systolic dysfunction.

Recommend medical management for angina and coronary artery disease and modification of risk factors. [REDACTED]. DE 1, p. 233.

(9) [REDACTED], in part:

MRI lumbar spine: IMPRESSION: L5-S1 facet hypertrophy. Diffuse disc bulge without clear neural impingement. Neural foraminal are patent. L4-L5 Diffuse disc bulge. Facet hypertrophy. Borderline size canal. Neural foraminal are patent. The conus and cauda-equina are adequately positioned. [REDACTED]. DE 1, p. 176

(10) [REDACTED], in part:

CT abdomen: IMPRESSION: No acute process. [REDACTED]

CT abdomen with contrast: Compared to [REDACTED]: Stable marked fatty infiltration of liver. Normal spleen, pancreas, adrenals, gallbladder, kidneys, bowel structures. No aneurysm, mesenteric infiltration or retroperitoneal adenopathy. No interval changes to bony structures. Descending colon no risk for strangulation. Lower thoracic structures are normal.

IMPRESSION: Minimal change in appearance of lateral abdominal incisional hernia on left, except mesh is no longer apparent. [REDACTED].

PROGRESS NOTE: CT abdominal scan shows evidence of left flank hernia but not a dangerous hernia and there are no bowel loops within hernia defect and only some soft tissue fat not showing signs of compromise such as strangulation or incarceration. [REDACTED]. DE 1, pp. 242-256.

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 at hearing to not performing SGA since brief work attempt in 2006. Therefore, 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)

The medical evidence has established that Claimant had physical impairments which are more than minimal, which effect basic work activities, and will last for the rest of the Claimant’s life. There were no medical records establishing mental impairments that prevent basic work activities.

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 her 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.

The medical evidence established coronary artery disease, hypertension and some lumbar changes. There were no other physical impairments established in the medical records or that had medical physical limitations. See finding of facts 8-10.

Appendix I, Subpart P of 20 CFR, Part 404, Listings discusses the analysis and criteria necessary to a finding of a listed impairment. The undersigned's decision was based on Listing 4.00 *Cardiovascular System* and Listing 1.00 *Musculoskeletal System*.

Listing 4.00 is not met due to the results of the December cardiac cauterization. The test results showed an occlusion in one artery and ejection fraction of 45%. There were notations in the medical records of [REDACTED] describing non-compliance. This opinion could be failure to take prescribed medication, failure to cease smoking or other medical non-compliance. At hearing the Claimant acknowledged smoking up to one pack of cigarettes daily; and further denied a history of substance use. This history is found in medical records from prior disability applications. The credibility of the Claimant's testimony is damaged.

For Listing 1.00 *Musculoskeletal System*, the most important criteria that must be established in the medical records is loss of function of the musculoskeletal systems. The criteria requires of loss of the use of both upper and lower extremity function; and this was not established in the medical records submitted.

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 impairments do not meet listing level requirements. 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.

The Claimant was able to physically function by his testimony of ability to drive 3-4 times a week, which is proof of function of upper and lower extremities; and proof he can read and write for a driver's license. The Claimant testified he could not read or write English. This was not proven true and other evidence suggests the Claimant was not truthful. But the undersigned decides the Claimant cannot return to past construction work with the results of the Cardiac cauterization above. See finding of facts 8-10

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 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-eight 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 or light work as a Result of Severe Medically Determinable Impairment(s), Rule 201.19, for younger individual, age 45-49; education: limited or less; previous work experience, skilled or semi-skilled—skills not transferable; the Claimant is “not disabled” per Rule 201.19.

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: 04/20/09

Date Mailed: 04/20/09

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:

