

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. 2008-23783

Issue No. 2009; 4031

Case No:

Load No.

Hearing Date:

October 6, 2008

Gogebic 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 6, 2008. The Claimant and his attorney, [REDACTED] appeared at the Department of Human Services (Department) in Gogebic County.

The record was left open to obtain additional medical information; and the new evidence was 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) 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 April 23, 2008 the Claimant applied for MA-P and SDA.
- (2) On June 16, 2008 the Department denied the application; on February 10, 2009 the SHRT denied the application finding the medical records indicated a non-severe impairment per 20 CFR 416.920(c).
- (3) On June 25, 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 thirty-seven years of age.
- (5) Claimant completed grade 12 and two semesters of college; and can read and write English and perform basic math.
- (6) Claimant was last employed June 2008 to August 2008 15-20 per week for [REDACTED] per hour; and now in a work study program for CAD and paid [REDACTED] per hour for 8 hours a week; but before in 2006 was a waiter; and in 2007 did lawn/landscape, drywall work and tree service and 9 years on the pipe line.
- (7) Claimant has alleged a medical history of neck and back problems due to a disc, carpal tunnel and loss of feeling in his arms.
- (8) June 2006 and May 2007, in part:  
  
June 2006: No radicular findings or symptoms. MRI reveals central and leftward C5/C6 disk protrusion. In absence of radiculopathy, I would not recommend surgical intervention for disk protrusion. [REDACTED] DE 1, pp. 17

May 2007: Neurosurgery Evaluation: Had cervical radicular symptoms with spondylosis and disc protrusion and was offered surgical therapy with anterior cervical discectomy and fusion if he stopped smoking. He has been unable to quit smoking and hopes I will consider surgery. Today he has no radicular pain. Sloe C/O is mechanical neck pain with interscalpular discomfort. No radiating neuropathic symptoms. Motor strength 5/5 throughout, no pathological reflexes, normal gait. I do not have the most recent June 2006 MRI for review. [REDACTED]. Department Exhibit 1, pp. 13-14.

(9) January 2009: in part:

MEDICAL EVALUATION: Chief complaint of neck pain. History of work injury four years ago and went to chiropractor for treatment. Had MRI and then injections and neck traction. Independent in ADL, prepares meals, does minimal housework slowly, can climb stairs. Past two and one-half weeks has been working at a ski hill four hours a days. Then stopped to return to school. Insurance ran out in December 2008. Was taking medications of Flexoril, Ultram, Vicodin and Ibuprofen. Smokes one-half pack a day for 24 years. Fifteen beers a week.

PHYSICAL EXAMINATION: Sitting comfortably, no acute distress, able to arise from chair to perform testing. No difficulty bending to remove and replace shoes. Affect/dress appropriate, well groomed. Mildly painful behavior provided good consistent behavior. Cooperative in answering questions and following commands. Memory appeared intact with normal concentration. Appropriate insight and judgment. Vital Signs, Skin, Eyes/Ears, Neck, Chest, Heart, Abdomen, Vascular, Musculoskeletal, Neuro, and Range of all joints, all four extremities, cervical spine, lumbar spine, arms and fingers: [All within normal limits.] Except C/O pain in neck with cervical spine motions. Symptoms were mild.

[REDACTED] Department Exhibit (DE) N, pp. 1-5.

### 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 he had not performed SGA since July 2006. But there was evidence of SGA measured by wages for 12 weeks in 2008. Fifteen to twenty hours per week at [REDACTED] equals a range of [REDACTED]. This does not equal SGA for 2008, which is \$940 per month. Other evidence was reviewed showing part time work in January 2009. But no other evidence was provided. See Finding of Fact 9. 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 (6<sup>th</sup> Cir 1985).

In this case, the Claimant has presented medical evidence of cervical spine pain but no radiculopathy. There was no medical evidence of range of motion limits or medically prescribed physical limitations. There was no medical evidence of mental impairments and the claimant

denies mental impairments. A complete review of all the available medical evidence has not established that Claimant has an impairment that has more than a minimal effect on basic work activities. See Finding of Facts 8-9.

Based on lack of medical evidence that the Claimant is unable to perform basic work activities, the undersigned finds the Claimant condition is not severe within the meaning of 20 CFR 416.920(c).

Your impairment(s) must be severe and meet the duration requirement before we can find you to be disabled. You must have a severe impairment. If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further. 20 CFR 916.920a(5)(c).

It is the finding of the undersigned, based upon the medical data and hearing record, that the Claimant is “not disabled” at step two because the Claimant does not have medical documentation of physical or mental impairments that are severe enough to prevent basic work activities; further review of the claim is not necessary.

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 requirements under SSI disability standards, and prevents basic work activities for ninety days. This Administrative Law Judge finds the Claimant is presently "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 programs.

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: February 24, 2009

Date Mailed: February 26, 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.

JRE

cc:

