

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.: 2008-23793
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
November 13, 2008
Oakland County DHS (3)

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 November 13, 2008. The Claimant and the representative appeared at the Department of Human Service (Department) in Oakland County.

The closure date was waived to obtain additional medical information. An Interim Order was issued to obtain new medical records which were submitted; and reviewed by the State Hearing Review Team (SHRT). The application was denied. 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) and retroactive MA-P for the month of December 2007 program?

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 February 25, 2008 the Claimant applied for MA-P.
- (2) On April 2, 2008 the Department denied the application: and on December 8, 2008 the SHRT guided by Vocational Rule 203.21 denied the application finding medical evidence for the ability to perform medium work.
- (3) On June 19, 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 fifty-four years of age.
- (5) Claimant completed grade 12; and can read and write English and perform basic math.
- (6) Claimant last worked in September 2007 on factory line and did custodial work and skilled trade at [REDACTED].
- (7) Claimant has alleged a medical history of lack of stamina due to heart with atrial flutter, right/left knee pain, arthritis right shoulder, hypertension, and depression and anxiety with lack of motivation and procrastination.
- (8) December 2007, in part:

C/O chest pain S/P MVA (Motor vehicle accident) driving restrained while intoxicated; and stated in ER feels like wanted to kill self. Vital Signs stable. History of angioplasty 13 years ago, CAD, HTN, depression with suicidal thoughts. Blood alcohol 292. Admits to smoking marijuana previous September. Physical Examination: [All within normal limits.] Except: 1+ pitting edema bilateral lower extremities. [REDACTED], DO, Claimant Exhibit (CE) A, 6/2-25/7
- (9) January and November 2008, in part:

January: Ambulatory to hospital via private car C/P chest pain for one week and shortness of breath. Mental Status: Calm, oriented times 3. History of alcohol consumption beer 3 cans per day. Admits to irregular use of prescribed Lasix. Physical Examination: Constitutional, Head, Eyes, ENT, Neck, Card, Respiratory, Abd, Ext, Skin, Neuro: [All within normal limits.] Except: obese, positive for occasional cough, positive for distended abdomen, 1-2 plus edema left lower extremity with trace on right lower extremity. Admitted. [REDACTED], DO. CE A, pp. 10-16

Carotid Doppler Ultrasound: IMPRESSIONS: No evidence of significant stenosis. Cardiac arrhythmia. [REDACTED] DO. CE A, pp. 8-9.

Cardiac Cauterization: [Only one of four pages submitted] CE A. p. 18

November: Outpatient Substance Abuse and Mental Health Treatment: Attending since October 2007 with interruptions by medical issues and incarceration. Made progress and diagnoses are now changed to Alcohol dependence in early remission; and Dysthymic disorder. Prescribed Celexa, Traxadone and [REDACTED] [REDACTED] reports mild improvement. [REDACTED], LMSW, CAAC.

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 to not performing SGA since September 2007. 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 (6thCir 1985).

In this case, the Claimant has presented medical evidence of physical/mental limitations that are more than minimal and impact basic work activities. The impairments will last his lifetime. See finding of facts 8-9.

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 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 establishes inebriation in December 2007, lower extremity pitting edema after intermittent use of Lasix and a mental diagnosis decreased from major depression to dysthymic disorder in November 2008. The severity, intent and criteria of Appendix 1 of Subpart P of 20 CFR, Part 404, Listing 4.00 *Cardiovascular System* and Listing 12.00 *Mental Disorder* were evaluated. The Claimant does not meet either of these listings due to the lack of medical records establishing the criteria of severe loss of function under 4.001a and 3a to e; and severe

loss of function under 12.00C. As noted, the medical records findings of the cardiac cauterization were not complete. At hearing, the Claimant testified to lack of stamina in ADLs and shortness of breath. The Claimant is very obese and has gained 50 pounds, which can contribute to shortness of breath and lack of stamina.

This Administrative Law Judge finds the Claimant is not presently disabled at the third step for purposes of the Medical Assistance (MA) program due to the lack of medical records establishing the intent and severity of the listings of Appendix 1 of Subpart P of 20 CFR, Part 404. 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/her 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 medical findings do not establish ambulation difficulties or deficits in the use of upper and lower extremities. The Claimant has the functional ability to drive a car; and testified to driving 2 of 7 days a week. This demonstrates an ability to use upper/lower extremities and make reasoned decisions. The Claimant testifies to using a cane but by his own decision, the cane was not prescribed by a doctor. The Claimant testified to no ability to return to [REDACTED] due to inability to stand 8 hours and not to custodial work due to knee pain. The Claimant testified to lifting 20 pounds, sitting 2 hours, standing 30 minutes and walking one block. Based on this, the

undersigned finds the Claimant cannot return to past work. Evaluation under step five will continue.

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 physical findings, and hearing record that Claimant's RFC for work activities on a regular and continuing basis is functionally limited to light work. Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines 20 CFR 416.969:

202.00 Maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s). (a) The functional capacity to perform a full range of light work includes the functional capacity to perform sedentary as well as light work. Approximately 1,600 separate sedentary and light unskilled occupations can be identified in eight broad occupational categories, each occupation representing numerous jobs in the national economy. These jobs can be performed after a short demonstration or within 30 days, and do not require special skills or experience.

(b) The functional capacity to perform a wide or full range of light work represents substantial work capability compatible with making a work adjustment to substantial numbers of unskilled jobs and, thus, generally provides sufficient occupational mobility even for severely impaired individuals who are not of advanced age and have sufficient educational competences for unskilled work.

(c) However, for individuals of advanced age who can no longer perform vocationally relevant past work and who have a history of unskilled work experience, or who have only skills that are not readily transferable to a significant range of semi-skilled or skilled work that is within the individual's functional capacity, or who have no work experience, the limitations in vocational adaptability represented by functional restriction to light work warrant a finding of disabled. Ordinarily, even a high school education or more which was completed in the remote past will have little positive impact on effecting a vocational adjustment unless relevant work experience reflects use of such education.

(d) Where the same factors in paragraph (c) of this section regarding education and work experience are present, but where age, though not advanced, is a factor which significantly limits vocational adaptability (*i.e.*, closely approaching advanced age, 50-54) and an individual's vocational scope is further significantly limited by illiteracy or inability to communicate in English, a finding of disabled is warranted.

Claimant at fifty-four is considered *approaching advanced age*; a category of individuals age 50-54. Under Appendix 2 to Subpart P: Table No. 1—Residual Functional Capacity: Maximum Sustained Work Capability Limited to Light Work as a Result of Severe Medically Determinable Impairment(s), Rule 202.13, for approaching advanced age, age 50-54; education: high school graduate or more; previous work experience, unskilled or none; the Claimant is “not disabled” per Rule 202.13.

It is the finding of the undersigned, based upon the medical data and hearing record that Claimant is “not disabled” at the fifth step.

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 based on disability program.

