

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.: 2008-26089

Issue No.: 2009; 4031

Case No.:

Load No.:

Hearing Date:

November 19, 2008

Wayne County DHS (19)

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 19, 2008. The Claimant appeared at the Department of Human Services (Department) in Wayne County District 19.

The medical records submitted by the Claimant were submitted to State Hearing Review Team (SHRT); and 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 State Disability Assistance (SDA) 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 December 7, 2007 the Claimant applied for MA-P and SDA.
- (2) On May 22, 2008 the Department denied the application; and on December 9, 2008 denied the application finding medical evidence supported a capacity to perform past relevant work.
- (3) On June 30, 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 years of age.
- (5) Claimant completed grade 11 and a GED; and can read and write English and perform basic math skills.
- (6) Claimant last worked in 2006 as a day care provider.
- (7) Claimant has alleged a medical history of a non-cancerous lung mass, coughing blood, hypertension and numbness in hands, arms, face and untreated depression.
- (8) November 2007, in part:

CURRENT DIAGNOSIS: hemoptysis, uncontrolled hypertension, non-compliance, sleep apnea, asthialgia (sic)—lung mass.

NORMAL EXAMINATION AREAS: General; HEENT; Abdominal, Neuro, Mental.

FINDINGS: Respiratory: positive for crackles. Cardiovascular: edema with increased blood pressure. Musculoskeletal: positive for DJD with increased pain and myalgia.

CLINICAL IMPRESSION: Deteriorating.

PHYSICAL LIMITATIONS: Limited, expected to last over 90 days; Lifting/carrying up 10 pounds 1/3 of 8 hour day; never 20 or over; no stand and/or walk; no assistive devices are needed; use of both hand/arms for simple grasping, reaching, fine manipulating and no pushing/pulling; no use of either feet/legs for operating controls. Can meet own need in home.

MENTAL LIMITATIONS: None. Medications: [REDACTED]
(sic), [REDACTED]. Department Exhibit (DE) 1, pp. 43-44.

(9) March 2008, in part:

Independent Medical Exam:

HISTORY: Episodes of cough with massive hemoptysis. Saw [REDACTED]
[REDACTED] and was told the [lung mass] does not look like cancer. Denies sweating or weight loss, or chest pain. Medications: Lisinopril, Norvasc. C/O shortness of breath on exertion, cough and hemoptysis.

PHYSICAL EXAMINATION: Alert, awake and orientated. BP 126/80, WT 272, HT 66", Visual acuity without glasses 20/30 bilaterally. HEENT, Heart, Abdomen, Extremities, Neurological, Deep tendon Reflexes, Gait and Sensation: [All within normal limits.] Lungs: decreased air exchanges no wheezing. [REDACTED]
[REDACTED]

Pulmonary Function Test results: Moderate Restriction. Pre: FVC 2.1. Post: 2.04. FEV1 Pre: 1.65, Post: 1.78. DE 1, pp.3-8

(10) April and June 2008, in part:

April: Radiological Report: FINDINGS: No evidence of pulmonary embolism, Slightly enlarged right paratracheal lymph node. Thoracic aorta not enlarged. No pleural or pericardial effusions are present. Heart not enlarged. Osseous structures are intact. IMPRESSION Mild degree of left lower lobe subsegmental atelectasis. Nonspecific slightly enlarged lymph node. Left adrenal gland soft tissue nodule. [REDACTED] Claimant Exhibit p. 18

June: Follow up visit. Originally seen for a right upper lobe mass and a CT guided scan biopsy was negative. C/O shortness of breath on exertion. No wheezing or coughing, no hemoptysis, no chest pain, no sinus symptoms or reflux, no fever or weight loss. Has excessive daytime sleepiness. She does not smoke. Medications: lisinopril and norvasc.

PHYSICAL EXAMINATION: General, Vital Signs, Head and Neck, Chest, Heart, Abdominal, Extremities, Neurologic: [All within normal limits.] CT scan showed complete resolution of right upper lobe mass. There is a small lymph node and right adrenal nodule which appeared before. Pulmonary function tests showed total lung capacity was normal. DLCO was 63% of predicted and could be due to atelectasis or obesity. Positive ANA and will refer

to rheumatologist and order sleep study. To follow with PCP regarding adrenal nodule. [REDACTED] Claimant Exhibit pp. 1-9.

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 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).

In this case, the Claimant has presented medical evidence to support a finding that Claimant had physical limitations that are more than minimal and impact basic work activities. The Claimant's physical impairments meet the duration period. There was no medical evidence of a mental impairment impacting 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 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 impairment is a "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. The undersigned's decision was based on Listings 3.00 *Respiratory system*.

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 the medical evidence does not meet the intent or severity of the listings. The examination and testing by [REDACTED] in June 2008, ruled out hemoptysis, coughing, lung mass and what was found may be related to obesity. See finding of fact 10. The results of the pulmonary function test do not meet Listing 3.02. 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 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.

The Claimant's past relevant work was day care provider. The Claimant testified to being unable to return to past relevant work, complaining of pain, numbness, sleepiness, shortness of breath. There were no appropriate medical test results establishing impairment for any musculoskeletal dysfunction. The shortness of breath may be due to obesity. But there were no medical records limitations after November 2007. The physical limitations prescribed by [REDACTED] are not repeated in any other of the medical records. At hearing, the Claimant testified to driving 3 days of 7. This type of activity requires coordination of upper/lower extremities among other skills. But the undersigned will not return the Claimant to past relevant work.

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 functional capacity," defined simply as "what can you still do despite you 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 limitations.

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. There was no medical evidence of physical function

restrictions after November 2007. 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 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 202.10, for approaching advanced age, age 50-54; education: limited or less—at least literate and able to communicate in English; previous work experience, unskilled or none; the Claimant is “not disabled” per Rule 202.10.

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 the State Disability 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: 03/24/09

Date Mailed: 03/27/09

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:

