

[REDACTED]

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.: 2008-29288
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
December 8, 2008
Wayne County DHS (18)

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 December 8, 2008 at the Department of Human Service (Department) in Wayne County. The Claimant appeared.

The closing date was waived. Additional medical records were obtained and 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) and retroactive MA-P for February 2008 programs 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 May 7, 2008 the Claimant applied for MA-P and SDA.
- (2) On June 15, 2008 the Department denied disability; and on March 6, 2009 the SHRT guided by Vocation Rule 203.21 denied the application because medical records indicated a capacity to perform a wide range of unskilled medium work.
- (3) On August 22, 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-two years of age.
- (5) Claimant completed grade 12 and two years of college; and can read and write English and perform basic math.
- (6) Claimant last worked in February 2008 three months at a steel corporation but couldn't do the required lifting; and prior work was construction crew on the railroad, general labor in an oil field and on a machine in automotive factory.
- (7) Claimant has alleged a medical history of hospitalization for a bleeding stomach ulcer, fatigue, chronic neck pain from a job injury, Hepatitis B and C and denies mental problems but has a history of ETOH abuse, last use, August 2008.
- (8) April 2008, in part:

CURRENT DIAGNOSIS: Hepatitis C with liver cirrhosis. Chronic neck pain. Peptic ulcer disease S/P gastrectomy secondary to bleeding.

HT: [At hearing 68"] WT: 134, BP 122/78.

NORMAL EXAMINATION AREAS: General; Respiratory; Cardiovascular, Neuro, Mental.

FINDINGS: HEENT: moderate pallor. Abdominal: midline scar with mild tenderness. Mild hepatomegaly. Musculoskeletal: bilateral lower extremity weakness.

CLINICAL IMPRESSION: Deteriorating.

PHYSICAL LIMITATIONS: Limited, expected to last over 90 days; Lifting/carrying less than 10 pounds 1/3 of 8 hour day; 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, fine manipulating; no use of either feet/legs for operating controls. Right and Left muscle power 3/5. Can meet own need in home.

MENTAL LIMITATIONS: Limited in sustained concentration with short attention span and poor sleep. Medications: Vicodin, Pepcid AC, Folic Acid/MVI and B12. In June 2007 was advised to stop drinking alcohol and stop smoking. [REDACTED]. IM. Department Exhibit (DE) 1, pp. 9-10 and 15.

(9) June and November 2008, in part:

June: History: decreased appetite, hepatitis C, weakness, pain and headache. Physical Examination: In no acute pain/difficulty. Skin: no jaundice, Head: unremarkable. Neck: [Illegible] Chest: Clear, Heart: regular rate and rhythm. Abdomen: flat, soft, non-tender to palpation {Illegible} normal bowel sounds. Extremities: no swelling. Neurologic and Structural: no abnormal findings.

June: CBC results: MCH 33.7 high of normal range 27.0-33.0; other wise results of CBC normal.

November: Low back pain after lifting pallets at work yesterday. WT 146. SLR negative. Diagnosis: back strain. [REDACTED], [REDACTED]. DE N, pp. 24-35.

(10) January 2009, in part:

INTERNAL MEDICINE EXAMINATION: HISTORY: C/O right cranial headache one a week, swelling in neck for 15-20 years, no treatment but was given analgesics. No MRI or CT scan. States cannot read a newspaper probably needs reading glasses. States lost 30 pounds since one year ago and has diarrhea twice no bloody stool. Complaints of pain right elbow. Smokes two packs cigarettes a day for 30 years; and history of alcohol abuse for 20 years and has been using whiskey and beer.

PHYSICAL EXAMINATION: HT: 68", WT 140 pounds, BP 116/80. heent, Neck, Cardiovascular system, Lungs, Abdomen, Extremities, Skin, Spine, Bones & Joints, Neurology: [all within

normal limits.] Except: very poor dental hygiene, Hepatomegaly with scars of surgery, tattooing all over torso and upper limbs, Straight leg rising at 90 was associated with backache. No objective findings of headaches. May have alcoholic liver disease. Degenerative changes of CS and LS spine. Cervical spine X-ray: degenerative disc disease at C4-C5, C5-C6 and C6-C7 levels. Comprehensive Blood tests: AST 81 high in range 10-35; ALT 63 high in range 9-60; MCH 33.6 high in range of 27.0-33.0. A. Said, MD. IM. DE N, pp. 76-78.

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 February 2008. But Dr. Aguirre notes in November 2008 medical records that the Claimant hurt his back lifting pallets at work yesterday. See finding of fact 9. There was no additional evidence. 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 to support a finding that Claimant may have some physical limitations on his abilities to perform basic work activities. See finding of facts 8-10. The medical evidence has established that Claimant has a physical impairment that has more than a minimal effect on 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 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 hepatomegaly, cervical spine degenerative disease and lumbar pain and some restriction of movement.

Appendix 1 of Subpart P of 20 CFR, Part 404. Listing 5.00 Gastrointestinal Disease; and Listing 1.04 *Spinal Disorders* were reviewed. After reviewing the criteria of the listings, the undersigned finds the Claimant does not meet the listing requirements. There were no medical records of symptoms of liver disease such as ascites, jaundice, and recurrent gastro bleeding, malnutrition or weight loss. [REDACTED] found in January 2009 that the Claimant weighed 140

pounds. In April 2008, [REDACTED] found his weight to be 134. Thus the Claimant has gained weight.

For Listing 1.04, the medical records do not report that the Claimant's cervical and lumbar spine was impinging on his spinal cord. In January 2009 the doctor did not find loss of function, which is the criteria for meeting Listing 1.05. See finding of fact 10.

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 records lacked the necessary listing level criteria and severity. 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 strenuous: [REDACTED] and construction crew. The Claimant testified he cannot return to this type of past relevant work due to the lifting limits of up to 20 pounds. The undersigned accepts this testimony; and decides the Claimant cannot return 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 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-two 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.

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, and prevent other medium employment 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: _____

Date Mailed: _____

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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