

[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.: 2008-29510

Issue No.: 2009, 4031

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

November 6, 2008

Wayne County DHS (57)

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 6, 2008. The Claimant and his representative, [REDACTED] appeared at the Department of Human Service (Department) in Wayne County, [REDACTED].

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.

ISSUE

Whether the Department properly determined the Claimant was "not disabled" for purposes of Medical Assistance based on disability (MA-P), retroactive MA-P for September, October and November 2007 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 December 21, 2007 the Claimant applied for MA-P and SDA.
- (2) On May 19, 2008 the Department denied the application; on February 27, 2009 the SHRT denied the application finding the medical records established a non-severe impairment per 20 CFR 416.920 (c)
- (3) On August 15, 2008 the Claimant filed a timely hearing request to protest the Department's determination.
- (4) Claimant's date of birth is May 14, 1967; and Claimant is forty-one years of age.
- (5) Claimant completed grade 10 and GED; and can read and write English and perform basic math.
- (6) Claimant was last employed 2003 as resource specialist for a faith based organization; a machine operator and material handler and hilo driver.
- (7) Claimant has alleged a medical history of September 2007 colostomy which was reversed in June 2008, hypertension, and irregular heart beat and denies mental impairments.
- (8) September and October 2007, in part:

September: Primary Diagnosis: Intestinal vesicle fistula.
Secondary Diagnosis: Septicemia, history of ETOH abuse, diverticulosis of colon, umbilical hernia, hypokalemia and sexually transmitted disease. Treated with IV antibiotics and surgical exploration with exterior excision of large intestine and proctosigmoidoscopy. Diagnosed with hypertension. Responded well to treatment and was discharged home. To follow with [REDACTED]; and take medications including [REDACTED]

Exhibit (DE) 1, pp. 23-24

October: Admitted with altered mental status and positive urine culture. Currently has diverting colostomy. EKG findings abnormal and found to have left ventricular systolic dysfunction with ejection fraction of 45% and mild pulmonary hypertension. Altered mental status resolved and was due to overdosing on friend's [REDACTED] taken for pain. Follow up with PCP and go to alcohol rehabilitation. Medications: [REDACTED]

DE 1, pp. 31-32

(9) May and June 2008, in part:

May: To ER for acute alcohol intoxication [results 330] with mild abdominal pain. Had colostomy done September 2007 but bag did not have blood. Smokes one pack cigarettes per day and smokes marijuana and drinks six packs daily of beer, wine and liquor. Has attended AA.

Physical Examination: [All systems within normal limits.] X-rays negative. Cardiology cleared with negative stress test and negative echo of CVS. Counseling was done regarding ETOH. To follow one week for reversal of colostomy. Discharged in stable condition with advice to continue [REDACTED]

June: DISCHARGE DIAGNOSES: Reversal of transverse colostomy. Nonsustained ventricular tachycardia. Electrolyte imbalance. Acute alcohol intoxications. Parastomal herniation. Diverticulosis. Macrocytic anemia secondary to ETOH.

Post operative course uneventful Tolerated diet. Avoid heavy lifting until cleared. Vital signs stable on discharge to home to follow with MDs in one to two weeks. Medications: [REDACTED], [REDACTED]. Advised not to drink when taking pain medications. [REDACTED] Claimant Exhibit A, pp. 1-19.

(10) December 2008, in part:

INDEPENDENT MEDICAL EXAMINATION: Reversal of colostomy but told had cardiac problems. C/O pain on exertion and shortness of breath on walking four blocks. Smokes one pack per day and drinks one six-pack per day.

PHYSICAL EXAMINATION: Vital signs: HT 5'9", WT 162, BP 150/100, 140/90 on average. Visual acuity without glasses 20/20

right, 20/30 left eye. General Survey, HEENT, Cardiovascular, Gastrointestinal, Extremities, Neurologic, Pulmonary Function Test, EKG: [All within normal limits.] with bit of tachycardia and few ventricular premature complexes and no acute changes.

Pain and shortness of breath may be due to lifestyle drinking/smoking but should see cardiology. [REDACTED] DE N, pp. 1-8.

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 CRF 416.905

In determining whether an individual is disabled, 20 CRF 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 to not performing SGA since 2003. 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 (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 sufficient medical evidence of physical limitations that are more than minimal and effect basic work activities. The medical evidence has established that Claimant has limitations that have more than a minimal effect on basic work activities. Claimant’s impairment has lasted/expected to last continuously for twelve months or more. See finding of facts 8-10

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 the medical record establishment of functional limitations compared to the criteria of the listing. according to Listing 5.00 *Digestive System* and Listing 3.00 *Cardiovascular 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 due to the lack of medical records establishing the intent and severity of the listings under 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 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 Claimant's last work was resource specialist, machine operator, material handler and hilo driver. [REDACTED] opines the claimant could perform work with a position sitting for a majority of the time. Based on this medical opinion, the undersigned 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 sedentary work. See finding of facts 8-10. 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-one is considered a *younger individual*; a category of individuals age 18 to 49. Under Appendix 2 to Subpart P: Table No. 1—Residual Functional Capacity: Maximum Sustained Work Capability Limited to Sedentary Work as a Result of Severe Medically Determinable Impairment(s), Rule 201.24, for younger individual, age 18 to 49; 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 201.24.

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 requirements under SSI disability standards, and prevent other sedentary

work 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/
Judith Ralston Ellison
Administrative Law Judge
for Ishmael Ahmed, Director
Department of Human Services

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

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:

[REDACTED]