

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. 2008-29936
Issue No. 2009; 4031
Case No: [REDACTED]
Load No. [REDACTED]
Hearing Date:
December 4, 2008
Montcalm 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, the Claimant and his father, [REDACTED] appeared at a hearing held on December 4, 2008 at the Department of Human Services (Department) in Montcalm County.

The closure date was waived to obtain additional medical information; and new records were received. State Hearing Review Team (SHRT) reviewed and denied the application. 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 March 27, 2008 the Claimant applied for MA-P and SDA.
- (2) On June 17, 2008 the Department denied the application; and on January 2, 2009 the SHRT guided by Vocational Rule 203.28 denied the application finding the medical records supported the capability to perform other medium work that doesn't require heavy lifting or constant bending and crouching.
- (3) On August 21, 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 forty-six years of age.
- (5) Claimant completed grade 12; and can read and write English and perform basic math.
- (6) Claimant last worked in 2006 in the heating/cooling service for over 20 years.
- (7) Claimant has alleged a medical history of 1985 injury and several surgeries without relief; causing back spasms, right leg numbness, pain, decreased ability to sit and walk and decreased sleep.
- (8) 1985-2007, in part:

23 year old seen for back injury occurring four months ago. Went back to work and pain was exacerbated with pain right hip and right leg shooting to ankle. Pain worse on activity with lumbosacral spine (LS). Physical Examination: 6', weight 135. Mild to moderate paraspinal spasm with some restriction of mobility of LS. Foraminal, compression test and straight leg raising are negative for increasing or inducing pain. Extensor longus is weak -4/5. Hypalgesia in L5 distribution on right side. Knee and ankle jerks were symmetrical. He can return to work with corset and no lifting over 25; and no bending, twisting, light duty.

1986: NMR showed small bulging disc at L5-S1.

1987: Implantation of deep spinal cord stimulating system.

1990: Removal of dorsal spinal column stimulating system.

1991: Intractable pain low back and right leg. Advised to quit smoking showing signs of sympathetic dysfunction in both lower extremities.

1995: Have not seen him for four years. No surgical procedures since implantation removal. C/O pain low back and numbness tingling lower extremities. Able to work. Moderate paraspinal spasm, restriction of mobility of LS with arthritis. Weakness of right EHL. Reflexes normal. [REDACTED]

2007: MRI lumbar spine: IMPRESSION: small disc protrusion, LS level with mild to moderate degenerative disease at L4-L5, L5-S1. Central spinal cord, D12-L1 through L3-4 levels are all normal.

[REDACTED] Department Exhibit (DE) 1, pp. 10-75.

(9) February 2008, in part:

C/O constant low back pain and on/off lower extremity pain, right worse than left both legs bother him. With numbness both thighs on sitting. Denies weakness. Denies bowel/bladder dysfunction. Takes over the counter medication and Flexoril.

Neurological Examination: Well developed, nourished and groomed, alert and orientated times three. Recent and remote memory seems intact. Attention span and concentration seem quite good. Speech good. No Babinski or clonus. Finger to Nose, rapid alternating movements, heel to shin, motor exam lower extremities, reflexes, sensory, gait and station, muscle strength and tone in upper and lower extremities: [All within normal limits.] Negative fundoscopic exam. Straight leg raising at 10 degrees bilaterally produced severe back pain.

I don't think surgery will be the answer for him. Main problem is local low back pain with paraspinal muscle spasms. Recommend pain clinic and will give pain pills and muscle relaxer. He has paraspinal muscle spasms, a lumbar sprain and lumbar spondylosis. [REDACTED]. DE 1, PP. 56-57 and 61 and 71.

(10) September and October 2008, in part:

September: ER with chronic back pain to left side of lower back of left leg with numbness, which is identical to prior history of chronic back pain. Takes Vicodin and Flexoril. Normally does well except last three days. PHYSICAL EXAMINATION: Vital sign: hypertensive but otherwise normal. Tenderness to palpation length of lumbar spine and on left to right. CVA, skin, Abdomen {Within

normal limits.] Able to stand up from wheelchair and transfer to stretcher gingerly. Weight bearing left exacerbates pain as does sitting on left hip. Pain on range of motion both legs and resists straight leg raising due to pain. Muscle strength is 5/5 and equal bilaterally. Sensation is grossly intact and equal bilaterally. Deep tendon reflexes +1/4 bilaterally. Equal distal pulses. No cyanosis or edema. After analgesic administration was somewhat better and moving better prior to discharge. To follow with neurosurgeon, [REDACTED]

September: Severe back pain while putting on pants. Does have paraspinal spasms. Motor, sensory, deep tendon reflexes seemed within normal limits. Straight leg raising seemed to be negative with back pain. Good bowel/bladder control. Seems to be lumbar sprain. Will order MRI and refer to pain clinic. [REDACTED]
pp. 8-9

October: MRI: CONCLUSION: Disc dehydration at L4-5 and L5-S1. L3-4 no disc bulge or herniation, central canal stenosis or neural foraminal. L4-5 minimal disc bulging, small T2 focal disc protrusion. No central canal stenosis or neural foramina encroachment identified. L5-S1 minimal broad based disc bulging, a small central to right paracentral focal disc protrusion T2. Slightly increased interval from prior MRI. Minimal facet hypertrophy but no central canal stenosis or neural foraminal encroachment. [REDACTED] DE N, pp. 1-7

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. The 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 of chronic back pain for several years causing range of motion limitations due to pain. There were no medical records establishing mental impairments affecting basic work activities.

There are no medical records noting physical limitations but descriptions of pain related movements. The medical evidence has established that Claimant has a physical impairment that has more than a minimal effect on basic work activities. The medical records have established the impairments have lasted continuously for 12 months.

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. Under Appendix 1 of Subpart P of 20 CFR, Part 404, Listing 1.00, *Musculoskeletal System* was reviewed for the chronic back pain with clinical confirmation of paraspinal spasms and back sprain. Appropriate medical testing over several years, MRI has established disc bulging. But the most recent MRI confirmed no herniation, central canal stenosis or neural foraminal. Spinal cord impingement or nerve root compression is the basis for meeting the Listing 1.04, *Disorder of the Spine*. There were no medical records establishing muscle wasting, sensory loss or weakness. Medical records appear to establish the Claimant's has episodic exacerbation of back pain but not total loss of function; and the episodes occur with certain positions which was recognized in the SHRT decision above. See Finding of Fact 2. Further, the Claimant has no loss of function of the upper extremities. See Finding of Facts 8 to 9. The physical impairments do not meet the intent and severity of the listing because the Claimant is still functionally ambulatory and has normal strength in both the upper and lower extremities with a normal gait at most time periods.

In this case, this Administrative Law Judge finds the Claimant is not disabled at the third step for purposes of the Medical Assistance (MA) program. 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) prevents 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.

The Claimant testified to pain. There was an established appropriate medical test which establishes a cause for chronic back pain. But as noted above the claimant's back pain appears to be episodic with period of time without pain; and long periods of time of ability to function at SGA. See Finding of Facts 8-9.

Claimant's past relevant work was heating and cooling services; and due to the medical facts in this case; and the hearing testimony, 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 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 by impairments to sedentary work. 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-six is considered a *younger individual*; a category of individuals in age group 45-49 when age is a lesser advantage factor for making adjustment to other work; Rule 201.21; education: high school graduate or more; previous work experience: skilled or semi-skilled—skills not transferable; Claimant is “not disabled” per Rule 201.21.

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. 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: February 20, 2009

Date Mailed: February 24, 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

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