

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.: 2008-29947

Issue No.: 2009

Case No.: [REDACTED]

Load No.: [REDACTED]

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 and his representative appeared at the Department of Human Service (Department) in Wayne County

The record was left open to obtain new medical information. Claimant waived the closure date on the record. The medical information was submitted to the 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 retroactive MA-P for the month of February 2008 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) The Claimant filed for MA-P on April 15, 2008.
- (2) On June 20, 2008 the Department denied the application; and on April 3, 2009 the SHRT determined the ability to perform other work at the sedentary, light and medium level.
- (3) On August 18, 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-seven years of age.
- (5) Claimant completed grade 12 and some college; and can read and write English and perform basic math.
- (6) Claimant last worked at [REDACTED] in February 2008 earning [REDACTED] and March 2008 earning [REDACTED] and in May 2008 part-time earning [REDACTED] per month; with prior work in fast food restaurants and as a full-time cook; and at a plastics assembly factory. Department Exhibit (DE) 3, pp. 1-4.
- (7) Claimant has alleged a medical history of chronic kidney disease since November 2007, hypertension treated with medication, heart disease, blurry eyes, arthritis of knees, hands, and ankles, loss of memory and focus.
- (8) November 2007 and February 2008, in part:

November 2007: To ER with blood pressure of 233/154. Immediately started IV medication to decrease blood pressure; and became headache free and feeling better. Chest X-ray showed cardiomegaly. PE: [Within normal limits.] With no retinal hemorrhages or papilledema or extremity edema or organomegaly. CT scan negative. BUN was 30 and creatinine 2.55 consistent with renal insufficiency. Electrolytes within normal limits. Admitted to ICU. DIAGNOSES: Hypertensive crisis. Renal insufficiency. Mild hypokalema. [REDACTED]

February 2008: To ER for chest pain. History of hypertension; and feels short of breath. Takes Catapres. BUN 31 and creatinine 2.22. Electrolytes, EKG: normal. Heart catheterization showed no angiographic occlusive coronary artery disease but tortuosity of

tertiary vessels consistent with hypertensive disease and nonischemic cardiomyopathy. Admitted to Telemetry [REDACTED]. DE 1, pp. 19-24.

(9) August 2008 and January 2009, in part:

August 2008: CONSULTATION: IMPRESSIONS: Uncontrolled hypertension/hypertensive emergency. Medical non-compliance. Stage 3 chronic kidney disease secondary to hypertension. Nausea, vomiting, emesis secondary to hypertensive encephalopathy. Frequent admissions to hospital for chronic kidney disease and hypertension. Has not followed up with any of his doctor's appointments and unable to state names of medications he is taking. Denies present chest pain. Will change medication to IV. [REDACTED] DE 1, p. 19-20.

January 2009: To ER for chest pain. Known hypertension. Medications: Adalat, Catapres, Coreg, lisinopril and Lopressor. Seeing cardiologist [REDACTED] Physical Examination: Blood pressure 182/109. Repeat BP 126/70. Alert, orientated times 3, General, HEENT, Neck, Lungs, Heart, Abdomen, Musculoskeletal/Extremities, Neurological, Motor strength all four extremities: [All within normal limits.] Chest X-ray read as cardiomegaly and mild congestive heart failure. Creatinine 2.27, EKG showed LVH unchanged from previous EKG. Coagulation studies, CBC, troponin: [All normal.] Received GI cocktail and all chest pain was completely relieved. DISCHARGE DIAGNOSES: Chest pain, resolved. History of night sweats. Chronic dermatitis. Discharged in good condition and pain free. Given Prilosec for home. See [REDACTED] for GI problems. [REDACTED] Claimant Exhibit A-E plus unnumbered pages.

#### 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 at hearing to performing SGA in May 2008. But the Department submitted evidence of wages earned in February and March 2008. See finding of fact 6. The amounts; February 2008 earning \$2,517.74; and March 2008 earning \$2,191.74 are in excess of non-blind disability in 2008 of \$940. Thus, the Claimant was not eligible for MA-P in February and March 2008. But there was no evidence for April 2008; and in May 2008, the Claimant testified to working part-time earning \$518 per month. Therefore, Claimant is not disqualified for MA at step one in the evaluation process beginning April 2008.

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 (6<sup>th</sup> 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 (6<sup>th</sup> Cir. 1988); *Farris v Sec'y of Health & Human Servs*, 773 F2d 85, 90 (6<sup>th</sup> Cir 1985).

The medical evidence has established that Claimant has chronic kidney disease due to hypertension; and the hypertension has caused cardiomegaly with LVH. [Heart enlargement.] See finding of facts 8-9. The undersigned finds based on the medical records that the Claimant has physical impairments which are more than minimal, which effect basic work activities, and will last for the rest of the Claimant's life or will result in death. There was no medical evidence of a mental impairment that prevented 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 physical 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 her 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 established chronic kidney disease secondary to uncontrolled hypertension. [REDACTED] diagnosed stage 3 chronic kidney disease and medical noncompliance. Due to the Claimant's hypertension, he was diagnosed with cardiomegaly and LVH. There was no medical evidence that the Claimant has a loss of physical function of the upper or lower extremities. All the physical examinations in the hospitalizations were found to be within normal limits. In January 2009, the Claimant was given a GI cocktail and chest pain was completely resolved. See finding of fact 8-9.

Appendix I, Subpart P of 20 CFR, Part 404, Listings discuss the analysis and criteria necessary to a finding of a listed impairment. The undersigned's decision was based on Listing 4.02 *Chronic Heart Failure*, requires persistent symptoms despite a prescribed regiment of prescribed treatment. The evidence supports the Claimant was noncompliant with medical treatment. Thus, the symptoms reappear when he is noncompliance but there still were no signs of persistent edema, dyspnea, and fatigue or chest discomfort due to heart dysfunction. All these symptoms disappeared while hospitalized when properly treated.

Listing 6.00C 1 requires a longitudinal record that includes records of treatment, response to treatment, hospitalizations and laboratory evidence of renal disease that is progressive in nature such as elevated serum creatinine. In January 2009 the Claimant's creatinine was 2.27;

and not elevated over previous readings of creatinine as required under Listing 6.02 *Impairment of renal function*. See finding of fact 8-9.

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 impairments do not meet listing level requirements. 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.

The Claimant was able to physically function at employment in February and March 2008. But in April or May 2008, the Claimant testified to performing part-time work at the fast food restaurant. For this reason 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 findings, and hearing record that Claimant's RFC for work activities on a regular and continuing basis is functionally limited to sedentary work due to the chronic kidney failure which may get worse as uncontrolled hypertension continues. 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-seven is considered a *younger individual*; a category of individuals age 45-49. 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 201.21, for younger individual, age 45-49; education: high school graduate or more; previous work experience, skilled or semiskilled skills not transferable; the 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.

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.

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: 04/08/09

Date Mailed: 04/09/09

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:

