

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.: 2008-30453  
Issue No.: 2009, 4031  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date:  
December 1, 2008  
Oakland County DHS (2)

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 1, 2008. The Claimant and representative appeared at the Department of Human Service (Department) in Oakland County.

The closure date was waived to obtain additional medical information. An Interim Order was issued to obtain new medical records which were reviewed by the State Hearing Review Team (SHRT) who 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) retroactive MA-P for the months of January, February and March 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 April 26, 2007 the Claimant applied for MA-P and SDA.
- (2) On April 17, 2008 the Department denied the application: and on March 25, 2009 the SHRT guided by Vocational Rule 202.13 denied the application finding medical evidence for the ability to perform light unskilled work.
- (3) On July 8, 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-one years of age.
- (5) Claimant completed grade 11 and GED; and can read and write English and perform basic math.
- (6) Claimant last worked in 2002 caring for a relative and then was incarcerated but worked full time in property maintenance, auto plant, line inspector and [REDACTED] plant.
- (7) Claimant has alleged a medical history of back disc problem after surgery and injections with pain, hand and arm numbness on awakening, right/left feet pain and anxiety.
- (8) January, February and May 2007, in part:

January: CT cervical spine: IMPRESSION: Disc herniations severe at C5-C6 and C3-C4 levels, which appear to impress and compress the spinal cord. It is noted that evaluation of central canal is suboptimal on CT scan and MRI is recommended.

CT Brain: IMPRESSION: No acute intracranial process.

MRI cervical spine: IMPRESSION: large herniated disc at C3-C4, and C5-C6 which compresses the spinal cord and creates severe central canal stenosis. And degree of myopathy. Smaller disc bulges and herniation identified at remaining cervical levels [REDACTED].

C3/4 anterior cervical discectomy with fusion and plating. [REDACTED], MD. Department Exhibit (DE) 1, pp. 24-33.

February: CURRENT DIAGNOSIS: Cervical disk disorder with cord compression.

NORMAL EXAMINATION AREAS: General; HEENT; Respiratory; Cardiovascular, Abdominal, Musculoskeletal, Mental.

FINDINGS: Neuro: right bicep weakness 3/5.

CLINICAL IMPRESSION: Stable.

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; aspen cervical collar assistive device is needed; use of both hand/arms for simple grasping, fine manipulating, no reaching or pushing/pulling; use of both feet/legs for operating controls. MENTAL LIMITATIONS: None. Medications Vicodin, Baelolen. [REDACTED], MD. Neurosurgery. DE 1, pp. 79-80

May: Physical Assessment: Skin, HEENT, Neck, Chest, Lungs, Cardiovascular, Blood Vessels, Abdomen, Back, Extremities, Joints, Neurologic: [All within normal limits.] Except: abdomen positive for organomegally, cervical neck tenderness on palpation with good range of motion. Negative for low back pain, negative for straight leg raising. Positive for numbness and weakness left arm over right arm. [REDACTED] (sic), MD. DE 1, pp. 52-57.

June: Psychiatric Evaluation: Treatment at Lutheran Family Services for one year for depression and substance abuse problems. Medications: Keflex, Vicodin, Xanax, Flexeril, Beclofen, Tylenol with codeine. Last use of heroin was one week ago. Came alone to appointment by bus and was on time. Neat, clean, groomed. Walks with cane and wore heavy collar brace. Looks depressed and spoke slowly was polite and cooperative. Good contact with reality. Diagnoses: Axis I: Dysthymic disorder and Opioid Dependence. Poor prognosis. [REDACTED], MD. DE 1, pp. 48-51.

(9) February 2008, in part:

INDEPENDENT ORTHOPEDIC EXAMINATION: Can walk without a cane but has cane with him. Cervical spine range of motion is minimally limited but no neurological deficiency in upper limbs. Low back has limited motion with pain and tenderness. No neurotically deficiency in lower limbs and straight leg raising is negative. [REDACTED], MD. DE 1, pp. 7-8

Neurological and Pain Consultant: Pleasant, Head and Neck with full range of motion, Skin and Extremities limitations of range of motion right upper extremity, Back full range of motion without paraspinal tenderness or spasm, Cardiovascular normal, Higher cortical function—Mental Status normal, Cranial Nerves II-XII normal, Sensory normal, Reflexes normal, Coordination, Gait and Station normal, Motor normal except decrease power over right hand extensors, flexors, weakness and pain right side. IMPRESSION: Cervical postlaminectomy syndrome. Cervical facet disease. Will give injection and Lorcet and schedule EMG. [REDACTED], MD.

#### 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 2002. 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 (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 (6thCir 1985).

In this case, the Claimant has presented medical evidence of physical/mental limitations that are more than minimal and impact basic work activities. The impairments will last his lifetime. See finding of facts 8-9.

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 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 establishes cervical and low back pain with radiculopathy and depression. The severity, intent and criteria of Appendix 1 of Subpart P of 20 CFR, Part 404, Listing 1.00 *Musculoskeletal System* was evaluated. The Claimant does not meet this listing due to the lack of medical records establishing the criteria of severe loss of function under 1.00Ba.

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 of 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/her 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 medical findings do establish several limitations of the upper and lower extremities. Past relevant work was strenuous and the undersigned decides the Claimant cannot return to past 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 because of his pain, numerous musculoskeletal deficits See finding of facts 8-9. 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 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 sedentary Work as a Result of Severe Medically Determinable Impairment(s), Rule 201.14, for approaching advanced age, age 50-54; education: high school graduate or more; previous work experience, skilled or semi[skilled—skills not transferable; the Claimant is “disabled” per Rule 202.14.

It is the finding of the undersigned, based upon the medical data and hearing record that Claimant is “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 sufficient medical evidence to support a finding that Claimant’s impairments meet the disability requirements under SSI disability standards, and prevents return

to other work for ninety days. This Administrative Law Judge finds the Claimant is “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 “disabled” for purposes of the Medical Assistance program and the State Disability Program.

It is ORDERED; the Department’s determination in this matter is REVERSED.

Accordingly, The Department is ORDERED to initiate a review of the April 2007 application to determine if all other non-medical eligibility criteria are met. The Department shall inform Claimant and representative of its determination in writing. Assuming Claimant is otherwise eligible for program benefits, the Department shall review Claimant’s continued eligibility for program benefits in May 2010.

/s/  
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Judith Ralston Ellison  
Administrative Law Judge  
For Ishmael Ahmed, Director  
Department of Human Services

Date Signed: 05/11/09

Date Mailed: 05/11/09

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.

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