

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: 2008-4107

Issue No: 2009, 4031

Case No:

Load No:

Hearing Date:

January 28, 2008

Wayne 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, a hearing was held on January 28, 2008. The Claimant and his representative [REDACTED] appeared at the Department of Human Services (Department) in Wayne County.

The closure date was waived to obtain additional medical information. An Interim Order was issued for independent consultations and x-rays. No additional medical information was received; and the record closed. 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) 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 February 8, 2007 the Claimant applied for MA-P and SDA.
- (2) On September 5, 2007 the Department denied the application: and on December 28, 2007 the SHRT guided by Vocational Rule 202.10, denied the applications finding the ability to perform a wide range of light work.
- (3) On September 24, 2007 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 10; and can read and write English and perform basic math.
- (6) Claimant last worked in 1999 at factories including [REDACTED]
- (7) Claimant has alleged a medical history of twice a month seizures, arthritis in right/left arm and left leg, left hip pain to the foot and anxiety.
- (8) [REDACTED], in part:

CURRENT DIAGNOSIS: DJD, seizure disorder, liver disease, hypertension

HT 64", WT 150, BP 140/84.

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

CLINICAL IMPRESSION: Deteriorating.

PHYSICAL LIMITATIONS: Limited; and expected to last over 90 days; Lifting/carrying up to 10 pounds 1/3 of 8 hour day; no medical necessity for walking assistance; use of both hand/arms for simple grasping, reaching, fine manipulating; use of both feet/legs for operating foot controls. Can meet own needs in home.

MENTAL LIMITATIONS: none. Medications: Valium, Tylenol, Dilantin. [REDACTED] Department Exhibit (DE) 1, pp. 34-35.

January: Electroencephalography: INTERPRETATION: Abnormal EEG with bilateral temporal slowing in addition to occasional spikes and spike and waves. The waveforms are consistent with the underlying epilepsy treated with medications Dilantin and Valium. [REDACTED] DE 1, p. 39.

January: Office F/U: Hallucinating and seeing things not there. History of seizures since age 12. Taking Dilantin. Last seizure was two weeks ago. With shaking and [Illegible] and loss of consciousness while asleep. Right knee problem. Exam: alert, awake but slow. Motor 5/5 except right knee with pain. Gait: uses a cane. Increase Dilantin and instruct on seizure precautions. [REDACTED]

February: Right hip pain; and demanding Tylenol 3. Became aggressive and agitated. Still seizures maybe once a month. Will add Keppra for seizures. [REDACTED] DE 1, pp. 38, 40.

(9) June 2007, in part:

History of right hip fracture in 1990 with plate/pin fixation and rod right hip; and arthritis in hands/hips, swelling both legs, seizures for ten years; and mental depression. Medications: Dilantin, Valium, Tylenol 3, and medications for depression.

PHYSICAL EXAMINATION: Vital signs: BP 157/72, vision both 20/70, does not wear glasses. Fully alert and well orientated times 3. Affect flat and depressed. States gets seizures twice a month and unconscious for five minutes, has aura. Neurological, Head, Pupils, Neck, Skin, Nose/Throat, Chest/CV, Abdomen: [All within normal limits.] Musculoskeletal/Extremities: Cervical spine range of motion normal. Lumbar spine range of motion: some limitation bilaterally. Hips: some limitations. Right side of hips shortened 1/2 inch, Knees flexion normal. Hands grip strength 3/5. Uses a cane and without cane, limping very badly. [REDACTED] De 1, pp. 22-25.

(10) August 2007, in part:

Alleges disability due to arthritis, right hip fracture, epilepsy, possible liver problems; and bilateral hand and wrist pain,

cramping and use problems. States last seizure was one month ago without incontinence. Medications: Keppra, Dilantin and Valium. PHYSICAL EXAMINATION: WT 130 pounds, BP 131/72. General, HEENT, Heart/Lungs, Abdomen, Skin, Neurological, Musculoskeletal: [All within normal limits.]

Except: poor dentition, smells of cigarette smoke, walks with cane right hand, poorly groomed and clothes are dirty, mild right upper quadrant tenderness, liver is enlarged to palpation and percussion, gait is antalgic and walks slower with cane than when he is without cane, imbalanced standing without cane due to ½” right side shortening, right leg externally rotated, difficulty with on/off exam table. Results of any range of motion test questionable as effort was questionable including knee exam results, and hand/wrist range of motion is within normal limits, no gross deformities.

DE 1, pp. 7-13.

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 CFR 416.905

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 1999. 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 has physical/mental limitations that are more than minimal and impact basic work activities. The medical evidence has established that Claimant has physical/mental limitations have more than a minimal effect on basic work activities. The Claimant’s physical/mental impairments are expected to last a lifetime. 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 Listing 11.00 *Neurological System*; 12.04 *Affective Disorders*; and 1.00 *Musculoskeletal 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 because of a lack of medical records establishing present marked and severe physical and mental limitations. 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 medical findings were normal for all physical body systems except the lower extremities. The alleged mental impairment was not established in medical records. Past relevant work to 1999 was factory type work; and not performed according to the testimony since 1999. The Claimant established a seizure disorder in the medical records; and due to the necessity of seizure precautions, the Claimant cannot return to factory work around heights and machinery. While there were unanswered medical questions relating to current medical condition because of the lack of medical records.

The undersigned finds the present records sufficient to support that due to the Claimant's chronic physical conditions; he cannot return to other work. The undersigned finds the Claimant "disabled" at step four. See Finding of Facts 8-10.

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 other work activities 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.

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

Date Signed: March 9, 2009

Date Mailed: March 13, 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.

cc:

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