

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: 2009-11917
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 6, 2009
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted on April 6, 2009 pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department on December 22, 2009. The undersigned Administrative Law Judge has written the hearing decision after review of the evidence in the record. At the hearing, the Claimant was present and testified. [REDACTED] of [REDACTED] c. was present and represented Claimant. Deborah Hudson, Eligibility Specialist, appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA") program.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material and substantial evidence on the whole record, finds as material fact:

1. Claimant filed for Medical Assistance ("MA") on 9/11/08. Claimant requested MA retroactive to August of 2008.

2. Claimant's impairments have been medically diagnosed as high blood pressure and post cervical fusion C5-6.
3. Claimant's physical symptoms include dizziness, headaches, lack of balance, and tingling in his leg.
4. Claimant testified that he suffers from some difficulty with memory and concentration.
5. Claimant fell on 8/26/08 which resulted in a surgical fusion at C5-6.
6. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
7. Claimant is 5'11" tall and weighs 160 pounds.
8. Claimant is 36 years of age.
9. Claimant has a high school education. 1 ½ years of college.
10. Claimant is able to read and write perform basic math skills.
11. Claimant last worked in 2004 at [REDACTED] as a cashier/cook
12. Claimant has prior employment experience as a general laborer in a salt factory and doing home improvement work, such as, laying tile.
13. Claimant testified to the following physical limitations:
 - a. Sitting: 2-3 hours, has to get up b/c of dizziness.
 - b. Standing: 2-3 hours
 - c. Walking: 2 miles
 - d. Lifting: 5 lb. – 30 lbs.
14. Claimant testified that he performs household activities, such as, clearing the dishes and making his bed. Claimant testified that he is unable to stand long enough to wash dishes or clean.
15. Claimant testified that he used a cane for walking.
16. The Department found that Claimant was not disabled and denied Claimant's Medicaid application on 10/3/08.
17. Medical records examined are as follows:

[REDACTED] in part, (Exhibit 1, p. 9)
Patient slipped and fell on a porch on 8/26/08. Patient fell backward and hit his head. CT C-spine done on 8/29/08 showed locked facets @

C5-6. Patient had cervical fusion C5-6 on 8/29/08. Patient tolerated surgery well.

MRI C-spine ordered. C-spine edema & swelling from C3-7 with and compression noted @ C2-C5/6; cord compression thought to be due to epidural fluid collection.

PT/OT followed patient @ [REDACTED]; found to have good muscle strength but decreased coordination.

[REDACTED] 9/12/08, in part (Exhibit 1, p. 20)
[REDACTED] is status post cervical fusion of C5-C6 with weakness and poor coordination secondary to edema and cord compression. Based on a brief psychological evaluation, [REDACTED] does not appear to be experiencing emotional or cognitive difficulties at this time.

[REDACTED] 8/29/08, in part (Exhibit 1, p. 46)
Patient presents with L shoulder pain and L neck pain for past two days after he fell over porch banister. CT C-spine shows locked facet C5-C6, Right perched facet C5-C6.

[REDACTED] notes, in part (Exhibit 1, p. 73-80)
Patient is an excellent candidate for acute rehab, motivated progressing towards functional goals, continues to have significant neurological and functional issues that warrant skilled PT @ acute rehab.

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.

1. Current Substantial Gainful Activity

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). In this case, under the first step, the Claimant last worked in 2004. Therefore, the Claimant is not disqualified from receipt of disability benefits under Step 1.

2. Medically Determinable Impairment – 12 Months

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)

An impairment must last, or be expected to last for a continuous period of at least 12 months. 20 CFR 416.909.

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 F.2d 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 F.2d 860, 862 (6th Cir. 1988); *Farris v Sec’y of Health & Human Servs*, 773 F.2d 85, 90 (6th Cir. 1985).

In this case, the Claimant has presented medical evidence showing a locked facets at C5-C6 and subsequent surgical cervical fusion C5-6 on 8/29/08. However, Claimant’s impairments have not yet lasted for twelve months as the injury began in August of 2008. Unless the impairment results in death, it must have lasted, or be expected to last twelve (12) months. 20 CFR 416.909. In this case, Claimant’s impairment has not yet lasted twelve months. Claimant testified that he still has headaches as well as tingling in his leg that Claimant relates to his impairment and which was not completely resolved by surgery. Therefore, it is expected that Claimant’s impairment will last more than twelve months. The medical evidence has established that Claimant has a physical impairment that has more than a minimal effect on basic work activities. It is necessary to continue to evaluate the Claimant’s impairments under step three.

3. Listed Impairment

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 physical and mental impairment 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. Claimant has presented medical evidence showing that a fall off a porch caused him to suffer a neck injury resulting in locked facets at C5-6 and a subsequent surgical fusion on C5-6. There are no medical records to support Claimant's testimony of high blood pressure.

Appendix I, Listing of Impairments discusses the analysis and criteria necessary to a finding of a listed impairment. The Listing 1.04 *Disorders of the Spine* was reviewed. 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 the medical evidence reviewed does not show that the physical impairments meet the intent or severity of the listings. Furthermore, this Administrative Law Judge does not find any evidence of mental impairment. Sequential evaluation under step four or five is necessary. 20 CFR 416.905.

4. Ability to Perform Past Relevant Work

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.

Claimant's prior employment included working as a cashier at a fast food restaurant (light, unskilled), a general laborer in a salt factory (heavy, unskilled), and laying tile (medium, semi-skilled). Claimant has not provided any medical evidence of limitations imposed by a physician. However, considering Claimant's testimony about his physical limitations and Claimant's testimony that he could perform a sit down job, the undersigned finds the Claimant able to return to sedentary work. Based on this information, the undersigned finds the Claimant unable to return to past relevant work in any of the above mentioned prior occupations, as they were all higher than sedentary exertional level. Evaluation under step five will be made according to the law.

5. Ability to Perform Other 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 N.W.2d 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 at the level of sedentary work. This is based on Claimant's testimony that

he can sit for 2-3 hours, stand for 2-3 hours, walk for 2 miles, bend, stoop and lift up to 30 pounds. 20 CFR 416.967.

Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines 20 CFR

416.967(a) describes sedentary work:

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 thirty-six (36) is considered a *young individual*; a category of individuals in age group 18-44 when age is a more advantageous factor for making an adjustment to other work. The individual's age is not usually a significant factor in limiting such individuals' ability to make adjustments to other work including unskilled sedentary work. *Id.* at Rule 201.20. Claimant's educational level is High School graduate or more. Claimant's previous work experience was both unskilled and skilled or semiskilled—skills not transferable. Considering these factors, Claimant is “not disabled” per Rule 201.28. This is supported by Claimant's testimony that he would be able to perform a sit down job.

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 sufficient evidence to support a finding that Claimant's impairment is not disabling him under SSI disability standards. This Administrative Law Judge finds the Claimant is not "disabled" for purposes of the MA program.

DECISION AND ORDER

This Administrative Law Judge finds that the Department was correct in determining that the claimant was not disabled for the purposes of the MA program and IT IS ORDERED that the Department's decision in this regard be and is hereby AFFIRMED.

/s/
Jeanne M. VanderHeide
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 04/21/09

Date Mailed: 04/22/09

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 mailing 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.

2009-11917/JV

JV/dj

cc:

