

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.: 2009-16333
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
June 11, 2009
Wayne County DHS (76)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a hearing was held in Detroit, Michigan on June 11, 2009. The Claimant appeared and testified, along with [REDACTED]. The Claimant was represented by [REDACTED] of [REDACTED]. [REDACTED] appeared on behalf of the Department.

ISSUES

Whether the Department properly determined that the Claimant was not disabled for purposes of of the Medical Assistance ("MA-P") 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. The Claimant submitted an application for public assistance seeking Medical Assistance ("MA-P") retroactive from June 2008 and State Disability Assistance ("SDA") benefits on September 26, 2008.

2. On October 31, 2008, the Medical Review Team (“MRT”) determined the Claimant was not disabled for purposes of the MA-P and SDA programs. (Exhibit 1, pp. 3, 4)
3. On November 12, 2008, the Department sent an Eligibility Notice to the Claimant informing him that he was found not disabled. (Exhibit 1, p. 1)
4. On February 5, 2009, the Department received the Claimant’s written Request for Hearing. (Exhibit 2)
5. On April 7, 2009, the State Hearing Review Team (“SHRT”) determined the Claimant not disabled due to insufficient evidence. (Exhibit 3)
6. The Claimant’s alleged physical disabling impairment(s) are due to visual impairments to include retinal detachment, hypertension, and diabetes mellitus with neuropathy.
7. At the time of hearing, the Claimant was 51 years old with a [REDACTED] birth date; was 6’1” in height; and weighed 270 pounds.
8. The Claimant is a high school graduate with a work history as a handyman and truck/delivery driver.
9. The Claimant’s impairment(s) have lasted, or are expected to last, continuously for a period of 12-months or longer.

CONCLUSIONS OF LAW

The Medical Assistance (“MA”) program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services (“DHS”), formally known as the Family Independence Agency, pursuant to MCL 400.10 *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”).

Disability is defined as 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(a) The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913 An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a) Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.929(a)

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3) The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2)

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1) The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of

the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4) If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4) If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945 Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1) An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4) In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv) In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a) An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a) The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6)

As outlined above, the first step looks at the individual's current work activity. An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a)(4)(i) In the record presented, the Claimant is not involved in substantial gainful activity therefore is not ineligible for disability under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b) An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c) Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b) 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.

Id. The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely

from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985) An impairment qualifies as non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985)

In the present case, the Claimant alleges physical disability hypertension, visual impairments, and diabetes mellitus with neuropathy.

On [REDACTED], the Claimant was admitted to the hospital after complaints of foot infection and swelling. The Claimant was operated on and the abscess in his left foot was incised and drained. Subsequently, the Claimant's left second toe was amputated without complication. On [REDACTED], the Claimant was discharged with the diagnoses of left second toe amputation secondary to cellulitis from diabetic infection, hypertension, and anemia.

On [REDACTED], the Claimant was examined by an ophthalmologist and found to have bilateral tractional retinal detachments in both eyes with a vitreous hemorrhage in the left eye greater than the right eye. Visual acuity measured best corrected at 20/200 in the right eye and 20/80 in the left eye with moderate nuclear sclerosis noted. Ultimately, the Claimant was found to have severe end stage proliferative diabetic retinopathy with extensive fibrovascular proliferation in both eyes. Laser photocoagulation was scheduled along with a possible vitrectomy.

On [REDACTED], the Claimant underwent a pan-retinal photocoagulation.

On [REDACTED], the Claimant returned for an additional laser photocoagulation. The Claimant's vision measured 7/200 in the right eye and 20/200 in the left. New findings of posterior synechiae in the left eye were noted. The Claimant's pupil was quasi-miotic; had iris rubeosis, a flare and cellular reaction in the anterior chamber; and a fine KP on the endolthelium

of the left eye. The Claimant was provided pain medication and an anti-inflammatory. The ophthalmologist documented that it was “clear that his very severe end stage proliferative diabetic retinopathy is progressing rapidly.”

The Claimant was re-evaluated on [REDACTED] where, due to surgical options being limited because of social circumstances, symptomatic treatment continued.

On [REDACTED], the Claimant attended a glaucoma consultation with complaints of blurred vision. The Claimant was diagnosed with iritis, tractional retinal detachment, and nuclear sclerosis.

On [REDACTED], the Claimant underwent a pan-retinal photocoagulation procedure with the diagnosis listed and proliferative diabetic retinopathy.

On [REDACTED], the Claimant arrived for an additional laser procedure however the ophthalmologist was unable to laser. The record documents the Claimant with total retinal detachment owing to tractional and proliferative diabetic retinopathy in the right eye. The left eye had developed a small pupil due to posterior synechiae from an indolent panuveitis as well as proliferative diabetic retinopathy with tractional retinal detachments. Surgical procedures (vitrectomy with extensive membrane peeling, cataract removal, and photocoagulation to the retina) were recommended to attempt to restore some vision noting that the chances of a successful outcome with improvement in his vision was not good for his right eye.

On [REDACTED], the Claimant attended a Department ordered evaluation for his claim of disability due to high blood pressure, diabetes, and toe amputation. The Claimant’s visual acuity without glasses was 20/200 bilaterally. The Claimant’s left second toe amputation at the metatarsal phalangeal joint was noted as well as the Claimant’s limp. The Claimant was found to be diabetic, hypertensive, and to have a history of diabetic retinopathy.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented medical evidence establishing that he does have some physical limitations on his ability to perform basic work activities. The medical evidence has established that the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months therefore the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Claimant has alleged physical and mental disabling impairments due disability hypertension, visual impairments, and diabetes mellitus with neuropathy.

Listing 9.08 discusses diabetes mellitus and, in order to meet this Listing, an individual must also establish:

- A. *Neuropathy* demonstrated by significant and persistent disorganization of motor function in two extremities resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C); or
- B. *Acidosis* occurring at least on the average of once every 2 months documented by appropriate blood chemical tests (pH or pCO₂ or bicarbonate levels); or
- C. *Retinitis proliferans*; evaluate the visual impairment under the criteria in 2.02, 2.03, or 2.04.

11.00C. Persistent disorganization of motor function in the form of paresis or paralysis, tremor or other involuntary movements, ataxia and sensory disturbances (any or all of which may be due to cerebral, cerebellar, brain stem, spinal cord, or peripheral nerve dysfunction) which occur singly

or in various combinations establish a neurological impairment. 11.00C The degree of interference with locomotion and/or interference with the use of fingers, hands, and arms are considered. *Id.*

Listing 2.00 discusses special senses and speech impairments. Visual disorders are abnormalities of the eye, the optic nerve, the optic tracts, or the brain that may cause a loss of visual acuity or visual fields. 2.00A1 A loss of visual acuity limits your ability to distinguish detail, read, do fine work, or to perceive visual stimuli in the peripheral extent of vision. *Id.*

In this case, the objective medical records establish the severity of the Claimant's impairment and document the rapid progression of the disease. As detailed above, the Claimant's impairment(s) meets or equals Listing 9.08 therefore the Claimant is found disabled at Step 3 with no further analysis required.

DECISION AND ORDER

The Administrative Law Judge, based upon the findings of fact and conclusions of law, finds the Claimant disabled for purposes of the Medical Assistance program.

It is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate review of the September 26, 2008 application to determine if all other non-medical criteria are met and inform the Claimant and his authorized representative of the determination.
3. The Department shall supplement the Claimant any lost benefits he was entitled to receive if otherwise eligible and qualified in accordance with department policy.
4. The Department shall review the Claimant's continued eligibility in accordance department policy in July 2010.

/s/

Colleen M. Mamelka
Administrative Law Judge

For Ishmael Ahmed, Director
Department of Human Services

Date Signed: 06/17/09

Date Mailed: 06/17/09

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 the Circuit 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.

CMM/jlg

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