

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.: 2009-18300
Issue No.: 2009/4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
June 4, 2009
Wayne County DHS (55)

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 Hamtramck, Michigan on June 4, 2009. The Claimant appeared and testified, along with [REDACTED]. The Claimant was represented by [REDACTED] of [REDACTED]. [REDACTED] appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA-P") and State Disability Assistance ("SDA") benefit programs?

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 a public assistance application seeking MA-P, retroactive from June 2008, and SDA benefits on July 29, 2008. (Exhibit 1, pp. 2, 50)

2. On October 15, 2008, the Medical Review Team (“MRT”) deferred the disability determination in order to secure additional medical records. (Exhibit 1, p. 3)
3. On October 29, 2008, the MRT determined the Claimant was not disabled. (Exhibit 1, pp. 3, 4)
4. On November 6, 2008, the Department sent the Claimant an eligibility notice informing the Claimant he was not eligible for MA-P and SDA benefits. (Exhibit 1, p. 1)
5. On February 4, 2009, the Department received the Claimant’s Request for Hearing protesting the disability determination.
6. On April 20, 2009, the State Hearing Review Team (“SHRT”) found the Claimant not disabled. (Exhibit 2)
7. The Claimant’s alleged physical disabling impairments are due to chronic hand/shoulder pain, arthritis, chronic obstructive pulmonary disease (“COPD”), congestive heart failure, chest pain, pulmonary embolism, anemia, and renal insufficiency.
8. The Claimant has not alleged any mental disabling impairment.
9. At the time of hearing, the Claimant was 52 years old with a [REDACTED] birth date; was 6’ 6” and weighed 215 pounds.
10. The Claimant has a limited education with no significant employment over the last 15 years.
11. The Claimant’s impairment(s) has lasted, or is expected to last, continuously for a period of at least 12 months.

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 applicants 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) 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) 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 previously stated, 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 disqualified from receipt of disability benefits 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 severe only if, regardless of a claimant's age, education, or work experience, the impairment would 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 disability based chronic shoulder/hand pain, arthritis, COPD, congestive heart failure, pulmonary embolism, and renal insufficiency. In support of his claim, some older medical records were submitted which revealed treatment for acute bronchospasm, and abdominal wall hernia.

On [REDACTED] 2008, the Claimant presented to the emergency with a dog bite. The wound was cleaned and the Claimant was given a tetanus shot. The Claimant was discharged the same day.

On [REDACTED], the Claimant presented to the emergency room for evaluation of a productive cough. Chest x-rays documented emphysematous lungs with subsegmental atelectasis in the left lower lobe laterally. The Claimant was treated and discharged the same day.

On [REDACTED], the Claimant was admitted to the hospital via ambulance with complaints of coughing up blood, shortness of breath, profuse sweating and feeling cold along

with left-side pain. The Claimant was diagnosed with COPD in March, however he continued to experience productive cough with shortness of breath. A CT scan of the chest and lower extremities with contrast was performed which revealed a left lower lobe segmental and subsegmental pulmonary emboli; bilateral consolidation or atelectasis involving mostly both lower and right middle lobe near the fissures with small bilateral pleural effusions present and no evidence of obvious deep venous thrombosis. The chest x-ray (from [REDACTED] [REDACTED]) revealed vascular congestion with edema and effusions. A second x-ray on [REDACTED] [REDACTED], found increasing atelectasis and left effusion. Another x-ray from June 10th, found increasing vascular congestion and edema with no change in the left effusion. The heart was enlarged. The Claimant was discharged on [REDACTED] with the diagnoses of pulmonary embolism, systolic congestive heart failure, anemia, and renal insufficiency.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The Claimant was in stable condition and found able to occasionally lift 25 pounds and perform repetitive actions with all extremities.

On [REDACTED], the Claimant was treated for hypoxic respiratory failure secondary to CAP, congestive heart failure, and pulmonary embolism. The ejection fraction was 25%. In addition, the Claimant was believed to be going through withdrawal from alcohol.

On [REDACTED], the Claimant attended a department ordered consultative examination. The Claimant was found to have uncontrolled hypertension, a history of pulmonary embolism, and obesity. The internist opined that the Claimant was asymptomatic with no evidence of heart failure. The Claimant's blood pressure was high primarily due to no medication. The recurrence of pulmonary and cardiac problems was likely.

On [REDACTED], the Claimant presented to the emergency room with the chief complaint of chest pain. The Claimant was referred to the emergency room after being seen at the clinic and having high blood pressure. The Claimant had not had his medications in 6 months. The Claimant was discharged the following day with the diagnoses of acute myocardial infarction, angina, chest wall pain, esophageal spasm, GERD, musculoskeletal chest pain, pneumonia, and acute pulmonary edema.

On [REDACTED], the Claimant presented to the hospital with complaints of pain in his upper extremities. The Claimant's symptoms were found to be related to musculoskeletal strain. The Claimant was discharged on [REDACTED].

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 objective medical evidence establishing that he does have physical limitations on his ability to perform basic work activities. Accordingly, 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 asserts physical disabling impairment(s) due to chronic shoulder/hand pain, arthritis, COPD, congestive heart failure, pulmonary embolism, anemia, and renal insufficiency.

In consideration of the Claimant's objective medical evidence, Listings 1.00 (musculoskeletal system impairments), 3.00 (respiratory system impairments), 4.00

(cardiovascular impairments), 6.00 (genitourinary impairments), and 7.00 (hematological disorders) were reviewed and considered. Ultimately, it is found that the Claimant's objective medical evidence is insufficient to meet the intent and severity requirement of a listed impairment. Accordingly, the Claimant cannot be found disabled, or not disabled, at Step 3. Accordingly, the Claimant's eligibility under Step 4 is considered. 20 CFR 416.905(a)

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv) An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3) Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1) Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3) RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967 Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a) 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. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to

10 pounds. 20 CFR 416.967(b) Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c) An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d) An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e) An individual capable of very heavy work is able to perform work under all categories. *Id.*

Over the past 15 years, the Claimant has not had any significant employment. The Medical Examination Report noted that the Claimant was able to occasionally lift/carry 25 pounds and was able to perform repetitive actions with all extremities. Conversely, the Claimant testified to not being able to lift/carry any significant weight; could walk for short distances with his cane; could sit for about 20 minutes and could stand for about 5 to 10 minutes. The Claimant also needed assistance with his activities of daily living. If the impairment or combination of impairments does not limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. 20 CFR 416.920 In consideration of the Claimant's

testimony, medical records, and current limitations, it is found that the Claimant cannot be found disabled, or not disabled, at Step 4 thus the fifth-step in the sequential evaluation process is required.

In Step 5, an assessment of the individual's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v) At the time of hearing, the Claimant was 52 years old with a limited education. Disability is found disabled if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from the Claimant to the Department to present proof that the Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983). Transferability of skills is most probable and meaningful among jobs in which the same or a lesser degree of skill is required; the same or similar tools and machines are used; and the same or similar raw materials, products, processes, or services are involved. 20 CFR 416.968(d)(2)

In the record presented, and in consideration of the Claimant's age and education, it is found that the Claimant is able to perform the full range of activities for sedentary work as defined in 20 CFR 416.967(a). After review of the entire record and in consideration of the

Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II], specifically Rule 201.09, it is found that the Claimant is disabled for purposes of the MA-P program at Step 5

The State Disability Assistance (“SDA”) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10 et seq. and Michigan Administrative Code (“MAC R”) 400.3151 – 400.3180. Department policies are found in PAM, PEM, and PRM. A person is considered disabled for SDA purposes 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.

In this case, the Claimant is found disabled for purposes of the Medical Assistance (“MA-P”) program, therefore the Claimant’s is found disabled for purposes of continued SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above finds of facts and conclusions of law, finds the Claimant disabled for purposes of the Medical Assistance and State Disability Assistance programs.

Accordingly, it is ORDERED:

1. The Department’s determination is REVERSED.
2. The Department shall initiate review of the July 29, 2008 to determine if all other non-medical criteria are met and inform the Claimant and his 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 December 2010.

Colleen M. Mamelka

Colleen M. Mamelka
Administrative Law Judge
For Ishmael Ahmed, Director
Department of Human Services

Date Signed: 11/05/09

Date Mailed: 11/05/09

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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