

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.: 2009-20768
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
June 22, 2009
Wayne County DHS (18)

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 telephone hearing was conducted from Detroit, Michigan on June 22, 2009. The Claimant appeared and testified. [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") 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 a public assistance application seeking MA-P benefits on February 17, 2009.
2. On March 16, 2009, the Medical Review Team ("MRT") determined the Claimant was not disabled finding the Claimant capable of performing other work. (Exhibit 1, p. 3, 4)

3. On March 20, 2009, the Department sent an eligibility notice to the Claimant informing him that his MA-P benefits were denied. (Exhibit 1, p. 2)
4. On March 24, 2008, the Department received the Claimant's written request for hearing protesting the denial of his application. (Exhibit 1, p. 1)
5. On May 13, 2009, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 2)
6. The Claimant's alleged physical disabling impairments are due to high blood pressure and cholesterol, and hepatitis C.
7. The Claimant has not alleged any mental disabling impairment(s).
8. At the time of hearing, the Claimant was 51 years old with a [REDACTED] birth date; was 5' 7" and weighed approximately 140 pounds.
9. The Claimant is a high school graduate whose previous employment consists of general labor type positions.

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) 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) In the record presented, the Claimant is not involved in substantial gainful activity and last worked in May of 2003. The Claimant 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 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 disability on the basis of high blood pressure and cholesterol, and hepatitis C. The Claimant testified that his last 3 month treatment for his hepatitis C (diagnosed in 1992) went well, with no further medication and/or treatments recommended or scheduled. The Claimant's treating physician periodically monitors the Claimant's condition. Further, the Claimant testified that his high blood pressure and cholesterol are controlled with his current medication and diet.

On or about [REDACTED], the Claimant's treating physician completed a Medical Examination Report on behalf of the Claimant. The current diagnoses were listed as hepatitis C and hypertension. The Claimant's physical examination was normal. The Claimant was restricted to lifting/carrying less than 10 pounds; standing and/or walking less than 2 hours during an 8-hour work day; and limitations in performing repetitive actions with his hand/arms relating to pushing and pulling. The Claimant tires easily and his hypertension was noted as controlled.

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 some limited 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 disabling physical impairments due hypertension, high cholesterol, and hepatitis C. Appendix I, Listing of Impairments, discusses the analysis and criteria necessary to support a finding of a listed impairment.

Listing 4.00 defines cardiovascular impairment. An uncontrolled impairment means one that does not adequately respond to the standard prescribed medical treatment. 4.00A3f In a situation where an individual has not received ongoing treatment or have an ongoing relationship with the medical community despite the existence of a severe impairment, the disability evaluation is based on the current objective medical evidence. 4.00B3a If an individual does not receive treatment, an impairment that meets the criteria of a listing cannot be established. *Id.* Hypertension (high blood pressure) generally causes disability through its effect on other body systems and is evaluated by reference to specific body system(s) affected (heart, brain, kidneys, or eyes). 4.00H1 Hypertension, to include malignant hypertension, is not a listed impairment under 4.00 thus the effect on the Claimant's other body systems were evaluated by reference to specific body parts.

In the record presented, the Claimant was diagnosed with hypertension however the record is devoid of any evidence of any end organ damage (heart, kidney, brain, eyes) as a result of the hypertension. Similarly, there was no evidence of an enlarged heart or any resulting disability. According to the medical records (and the Claimant's testimony) the Claimant's high blood pressure is under control with his current medication and diet. Ultimately, based upon the hearing record, it is found that the Claimant's medical record does not support a finding that the Claimant's physical impairment of hypertension is a "listed impairments" or equivalent to a listed impairment within 4.00.

The Claimant also asserts physical disabling impairment due to hepatitis C which he was diagnosed with in the early 1990's. Listing 5.00 defines digestive system impairments. Disorders of the digestive system include gastrointestinal hemorrhage, hepatic (liver) dysfunction, inflammatory bowel disease, short bowel syndrome, and malnutrition. 5.00A Medical documentation necessary to meet the listing must record the severity and duration of the impairment. 5.00B The severity and duration of the impairment is considered within the context of the prescribed treatment. 5.00C1 Hepatitis C is evaluated under 5.05, chronic liver disease. 5.00D4a(ii) Chronic liver disease is characterized by liver cell necrosis, inflammation, or scarring, due to any cause that persists for more than 6 months. 5.00D1 Symptoms include itching, fatigue, nausea, loss of appetite, or sleep disturbance. 5.00D3a Signs include jaundice, enlargement of the liver and spleen, ascites, peripheral edema, and altered mental status. 5.00D3b Treatment for hepatitis C usually includes a combination of interferon injections and oral ribavirin and usually is discontinued after 12 weeks if no early viral response. 5.00D4c

Ultimately, based upon the hearing record, it is found that the Claimant's medical record does not support a finding that the Claimant's physical impairment(s), or combination of impairment(s), are "listed impairments" or equivalent to a listed impairment within 5.00; 20 CFR 416.920(a)(4)(iii) According to the medical evidence alone, the Claimant's physical impairments do not meet or equal the intent or severity of the listing requirements thus he cannot be found to be disabled for purposes of the Medical Assistance program. 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 worked as a general laborer whose responsibilities included lifting/carrying material averaging between 10 and 60 pounds; walking, standing, bending, and stooping. Given these facts, the Claimant's past work history is classified as unskilled, medium work.

The Claimant testified that he can regularly lift/carry approximately 10 pounds; sit and/or stand for approximately ½ hour; can walk approximately 2 blocks; and is able to grip, and grasp. 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 is not able to return to past relevant work as a general laborer therefore 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 51 years old thus considered a to be closely approaching advanced age for MA-P purposes. The Claimant is also a high school graduate. 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).

In the record presented, the Claimant's residual functional capacity for work activities on a regular and continuing basis does include the ability to meet at least the physical and mental demands required to perform light work. The Claimant, a high school graduate, is closely approaching advanced age with a history of unskilled work. The Claimant testified that he tires easily but is in no pain and that he is able to meet his activities of daily living. Although the Medical Examination Reports limits the Claimant to sedentary work, there was no objective medical documentation presented to support this position. 20 CFR 416.927(c)(2) As noted above, the Claimant's physical examination was normal, with no jaundice, and the Claimant's hypertension is controlled. Further, the Claimant's hepatitis C only requires monitoring. After review of the entire record and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II) as a guide, specifically Rule 202.13, it is found that the Claimant is not disabled for purposes of the MA-P program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above finds of facts and conclusions of law, finds the Claimant not disabled for purposes of the Medical Assistance program.

Accordingly, it is ORDERED:

The Department's determination is AFFIRMED.

/s/

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

Date Signed: 06/24/09

Date Mailed: 06/24/09

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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