

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: 2009-22086
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 26, 2009
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

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 filed on March 30, 2009. After due notice, a telephone hearing was held on August 26, 2009. The Claimant was present and testified. [REDACTED] also testified on behalf of Claimant. Angela Clark, MCW appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of the 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 MA on January 20, 2009.
2. Claimant is 5'8" tall and weighs 165 pounds.
3. Claimant is right handed.

4. Claimant is 49 years of age.
5. Claimant's impairments have been medically diagnosed as knee and hip problem due to degenerative findings, high blood pressure and high cholesterol, depression, tingling in left foot, and cramping at bottom of calf.
6. Claimant's physical symptoms are pain in left hip and knee, difficulty sleeping, hip pops out.
7. Claimant's mental symptoms are Memory difficulty, Panic attacks (shortness of breath, breakout into sweat and shake – 1x/week), Anxiety attacks (same thing), Sleep disturbances, Fatigue, Guilt Feelings, Hallucinations, Paranoid, self esteem issues.
8. Claimant takes the following prescriptions (side effects):
 - a) Darvocet for pain
 - b) HBP med
 - c) Cholesterol med
9. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
10. Claimant has a 12th grade education.
11. Claimant is able to read, write and perform very basic math skills (no multiplication or division).
12. Claimant last worked in 2006 banding coils of steel. The job required bending, standing and lifting up to 8 lbs. Claimant had been at this job 15 years when the plant closed.
13. RFC:
 - Sitting: 40 minutes tops then must get up
 - Standing: 10-45 minutes
 - Walking: ½ block (uses a cane, not prescribed)
 - Bend/stoop: Too painful – claimant cannot put sock on or tie shoe
 - Lifting: Can lift gallon of milk. Just can't bend down to pick up anything.
 - Grip/grasp: Doesn't grasp as well – doesn't know why.
14. Claimant performs household chores such as making bed, clearing dishes from table, can go to store for a few items, but not major grocery shopping.
15. Claimant uses a cane to ambulate
16. The Department testified that claimant is obviously in pain sitting there and is using a cane to walk.

17. The Department denied Claimant's application on 3/19/09
18. Medical records were reviewed as follows, in part:

██████████ X-ray of Hip (Exhibit 1, p. 12)
Degenerative findings of the joint space of the left hip

██████████ – Note from doctor (Exhibit 1, p. 13)
Mr. Valentine needs the services of an orthopedic regarding his degenerative disease of the hop.

██████████ Medical Exam Report (Exhibit 1, p. 9-11)
COMPLAINTS: Chronic Hip Pain, degenerative disc disease
LIMITATIONS: No pushing or pulling and no operating foot/leg controls
Claimant needs help with dressing.

██████████ ER visit (Exhibit 1, pp. 13-20)
Complains of pain in upper back

██████████ Orthopedic Surgeon IME (Exhibit 2, pp. 1-6)
Complains of pain in left hip down to foot.

GAIT: The pt walks with a walking cane. He has a gross limp on the left with and without the use of the walking cane. He is not able to balance or walk on his heels or toes with or without the use of his walking cane. He is unable to rise from a stooped or squatted position with or without the use of his walking cane. He is unable to sit, stand or remain in any one position for more than a few minutes at a time.

SPINE EXAM: The patient has marked tenderness to the left of the lumbar spine region. There is considerable muscular tightness in this are. Similarly there is mild to moderate limitation of motion of both hips (slightly worse on the left).

DEEP TENDON REFLEXES: Irregular in both lower extremities

CHRONIC LOW BACK STRAIN: Probable herniated lumbar disc to be conferred by future MRI

IMPRESSION:

1. Chronic low back strain
 2. Probable herniated lumbar disc to be conferred by future MRI
- His activity is basically limited to sedentary or light activity with a sit/stand option and only minimal walking.

RANGE OF MOTION: Limited in all areas of lumbar spine and hips

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.

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 2005. Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. “Substantial work activity” is work activity that involves doing

significant physical or mental activities. 20 CFR 416.972(a). “Gainful work activity” is work that is usually done for pay or profit, whether or not a profit is realized. 20 CFR 416.972(b). Generally if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that she has the demonstrated ability to engage in SGA. 20 CFR 416.974 and 416.975. If an individual engages in SGA, she is not disabled regardless of how severe her physical and mental impairments are and regardless of her age, education and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step. In the subject case, Claimant last worked in 2006. 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)

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 diagnosis of chronic low back strain and probable herniated lumbar disc and high blood pressure. Claimant physician and the IME Orthopedic surgeon have imposed physical limitations in terms of pushing, pulling, sitting, standing and walking.

The medical evidence has established that Claimant has physical and mental impairments that have more than a minimal effect on basic work activities; and Claimant’s impairments have lasted continuously for more than twelve months. 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.

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. 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 one can do in a work setting. RFC is the most one can still do despite limitations. All the relevant medical and other evidence in the case record applies in the assessment.

Claimant has presented medical evidence supporting chronic low back strain and possible herniated disc. In fact, the independent medical examiner, hired by the Department, indicated in his [REDACTED] report that Claimant's "activity is basically limited to sedentary or light activity with a sit/stand option and only minimal walking." (Exhibit 2, p. 3). Claimant's prior employment consisted of small production which was unskilled and light in exertional level. Claimant has been placed on sit/stand option and minimal walking physical limitations by the IME doctor. Claimant's own physician limited him to no pushing or pulling and no operating foot/leg controls. The undersigned finds the Claimant currently limited to sedentary work as light work requires a "good deal" of walking or standing. Claimant is, therefore, unable to return to past relevant work in his prior occupation. 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. Sedentary work is described as follows:

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.

20 CFR 416.967(a). Claimant's IME doctor recommended physical limitation dictates that Claimant is limited to a sit/stand option and walking less than two (2) hours per eight hour day. Therefore, Claimant would be limited to sedentary work. 20 CFR 416.967.

Claimant at forty-nine is considered a *younger individual*; a category of individuals in age group 45-49 when age is a lesser advantage factor for making adjustment to other work. 20 CFR 404, Appendix 2 to Subpart P, Rule 201.20. Claimant's education is "high school graduate" and his previous work experience is unskilled. While generally, such an individual would be able to make a transition into sedentary work, there are exceptions:

Inability to engage in substantial gainful activity would be indicated where an individual who is restricted to sedentary work because of a severe medically determinable impairment lacks special skills or experience relevant to sedentary work, lacks educational qualifications relevant to most sedentary work (e.g., has a limited education or less) and the individual's age, though not necessarily advanced, is a factor which significantly limits vocational adaptability.

20 CFR 404, Appendix 2 to Subpart P, Rule 201.00(c).

In the present case, Claimant is unable to perform past work. Furthermore, Claimant is limited to sedentary unskilled, sedentary work with a sit/stand option. The Department has failed to provide vocational evidence which establishes that Claimant has the residual function capacity for substantial gainful activity and that, given Claimant's age, education and work experience, there are significant numbers of jobs in the national economy which the Claimant could perform despite Claimant's limitations. Accordingly, the Administrative Law Judge concludes that Claimant is disabled for the purposes of the MA program.

In this case, there is sufficient evidence to support a finding that Claimant's impairment is disabling him under SSI disability standards. This Administrative Law Judge finds the Claimant is "disabled" for purposes of the MA program.

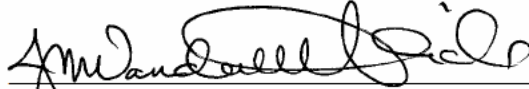
DECISION AND ORDER

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 as of January 20, 2009, including any retro benefits applied for.

It is ORDERED; the Department's determination in this matter is REVERSED.

Accordingly, The Department is ORDERED to initiate a review of the 1/20/09 application to determine if all other non-medical eligibility criteria are met. The Department shall inform Claimant of its determination in writing. Assuming Claimant is otherwise eligible for

program benefits, the Department shall review Claimant's continued eligibility for program benefits in January, 2011.



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

Date Signed: 01/25/10

Date Mailed: 01/27/10

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.

JV/dj

cc:

