

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: 2009-28146
Issue No: 2009, 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 9, 2009
Oakland County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

A hearing was held on September 9, 2009 pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department received on May 22, 2009. At the hearing, the Claimant was present and testified along with his friend [REDACTED]. Leanne Foote, FIM and Barbara Battle, FIS, appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA") and State Disability Assistance ("SDA") 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. Claimant applied for MA and SDA as of March 27, 2009. Claimant applied for retroactive MA benefits to December 15, 2008.
2. Claimant is 5'9" tall and weighs 190 pounds.
3. Claimant is right handed.
4. Claimant is 50 years of age.

5. Claimant's impairments have been medically diagnosed as panic attacks with agoraphobia, leg and back pain, degenerative arthritis both knees with internal knee derangement and bilateral shoulder internal derangement.
6. Claimant's physical symptoms are low back pain (10/10 – but still sitting), right shoulder (10/10), right knee (10/10), shooting pain from back all the way down to toes, pain in hands (knuckles, joints, palms of hands, thumbs).
7. Claimant takes the following prescriptions:
 - a) Flexeril
 - b) 800 mg Motrin
 - c) Vicodin
 - d) Valium 10 mg 5-6x/day
8. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
9. Claimant has a 12th grade education.
10. Claimant is able to read/write/perform basic math skills. Claimant performed as a high skilled journey man carpenter for 32 years through [REDACTED]. In this job, Claimant ran the crew (12 guys that worked with him, did commercial and residential). Claimant was required lift up to 100-150 lbs, bend/stoop, climb ladders, get on knees and lay out stuff. Claimant was on his feet constantly. Claimant was injured on job when his knee twisted completely around. Claimant has not worked since 1997.
11. Claimant testified to the following physical limitations:
 - Sitting: 45 minutes
 - Standing: 30 minutes
 - Walking: 500-600 yards
 - Bend/stoop: no
 - Lifting: 20-25 lbs w/ left arm sitting down.
 - Grip/grasp: yes b/c of arthritis in hands. Will often drop things.
12. Claimant is homeless. He lives on a boat in a friend's back yard.
13. Claimant performs household chores such as making meals. Claimant can cook although friends give him a hand. Claimant will make a sandwich. He also cooks bacon & eggs, steak dinner, hamburger. Claimant's friend comes and washes pans and shops for groceries. Claimant enjoys playing the guitar, but has difficulty doing so due to arthritis in his hands.
14. Claimant testified that he uses a cane everyday.
15. The Department denied Claimant benefits effective 4/21/09.
16. Medical records reviewed are as follows, in part:

██████████ ER Admission (Exhibit 1, pp. 9 – 15)

Patient presented to ER with right lower quadrant pain. CT and laparoscopic appendectomy performed.

██████████ Physical Medicine (Exhibit 1, pp. 16 – 18)

COMPLAINTS: Pain in both knees and shoulders, low back pain, pain in hands. Awakes at night with achiness throughout his whole body.

HISTORY: work related injury in 1997 to right knee. Favored left knee while in rehab, while using crutches developed low back and shoulder pain. 3 arthroscopic surgeries on right knee. Childhood boat injury which resulted in a closed head injury. Taking valium since he was a child. Reviewed report from ██████████ ER ██████████ ██████████, kept 13 hours) presentation with chest tightness and right arm numbness.

PHYSICAL EXAMINATION: The patient walks with an antalgic gait favoring the right side. He says that he cannot walk on heels and toes and cannot do a tandem gait because he has too much knee pain if he does it. Supine straight leg raise = 60 degrees bilaterally. Spasm seen in the lumbosacral paraspinal musculature bilaterally and tenderness seen in low back bilaterally. There were complaints of pain at the limits of flexion and hyperextension. Shoulder motion showed 100 degrees of right shoulder abduction and forward flexion and 120 degrees of left shoulder abduction and forward flexion. Crepitus was noted in both shoulders upon flexion and extension and rotations, right worse than left.

The patient walks with an antalgic gait favoring the right side. He is able to walk in my examination room without the use of any cane or ambulatory assistive devices. He did not bring any such device to this examination.

IMPRESSION: Gait difficulty, bilateral knee pain, chronic low back pain, bilateral shoulder internal derangement, degenerative arthritis both knees with internal knee derangement bilaterally, right worse than left.

This patient does have significant right knee damage as well as left knee abnormality. Significant loss of motion in both shoulders is noted and this is substantiated by loss of motion and significant crepitation in both shoulders. He is limited in his activities because of the back, shoulders and knees.

NEUROLOGIC AND ORTHOPEDIC SUPPLEMENTAL REPORT: Based on your objective examination, can the patient sit? No. Pain with bending or stooping

██████ – Behavioral Health Report

Patient had a panic attack on way to office. Given Ambien for sleep so valium can stay at lower total amount

PRIMARY DX: Panic Disorder with Agoraphobia

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). 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 this case, under the first step, the Claimant last worked in 1997. 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 F2d 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 from an independent medical examiner indicating that he suffers from bilateral shoulder internal derangement and degenerative arthritis of both knees with internal knee derangement. The IME also limited his physical activity and indicated that Claimant would have difficulty standing. Furthermore, Claimant testified to physical limitations in terms of sitting, standing, walking and lifting. Claimant also suffers from panic attacks and agoraphobia which require medication.

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 Listings 12.03 *Schizophrenic, Paranoid and Other Psychotic Disorders* and 1.02 *Major dysfunction of joint(s)* were 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 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.

The Independent Medical Examiner found that Claimant was limited in physical activities due to his back, shoulders and knees. Claimant is unable to sit and had difficulty upon

examination bending or stooping. In addition, Claimant would experience additional difficulties working in a group of people due to his agoraphobia. Comparing the various limitations and taking into consideration Claimant's testimony, this Administrative Law Judge has determined that Claimant would be limited to sedentary work with a sit/stand option.

Claimant's prior employment as a journeyman carpenter, based on testimony of his job duties, would have been considered semiskilled and heavy in exertional level as it required a significant portion of the day standing, bending, twisting and lifting over 100 lbs. Based on this information the undersigned finds the Claimant unable to return to past relevant work in any of the above mentioned prior occupations. 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 limits of sedentary with a sit/stand option and no overhead lifting as sedentary work requires occasional lifting of no more than 10 lbs. Claimant would have

difficulty lifting more due to his inability to bend or stoop and his shoulder derangement. 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 fifty years old is considered an *individual approaching advanced age*; a category of individuals in age group (50-54) who may be significantly limited in vocational adaptability if restricted to sedentary work. Considering Claimant's medical limitations, this Administrative Law Judge finds that claimant's impairments in his knees, shoulders and back render him capable of doing only sedentary work. Given Claimant's age (approaching advanced age), education (12th grade), and prior work experience of nontransferable semi-skilled work (journeyman carpenter), Claimant is disabled pursuant to Table 1, Rule 201.14 of the applicable law for the purposes of the programs. 20 CFR 404, Subpart P, Appendix 2, Table 1, Rule 201.14.

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

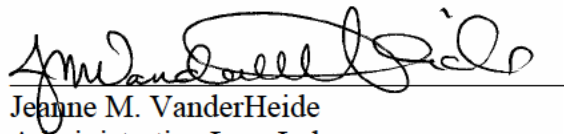
least ninety days. Receipt of SSI or RSDI benefits based on disability or blindness or the receipt of MA benefits based on disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in PEM 261.

In this case, there is sufficient evidence to support a finding that Claimant's impairment has disabled 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 upon the above findings of fact and conclusions of law, decides that the claimant is medically disabled under the MA program as of March 27, 2009, including retroactive benefits to December, 2008.

Therefore the department is ordered to initiate a review of the application of March 27, 2009, if not done previously, to determine claimant's non-medical eligibility. The department shall inform the claimant of the determination in writing. The case shall be reviewed November, 2010.



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

Date Signed: 11/17/09

Date Mailed: 11/23/09

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.

JV/dj

cc:

