

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: 200928399
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 2, 2009
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

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. After due notice, a hearing was held on September 2, 2009.

ISSUE

Was the denial of claimant's application for MA-P and SDA for lack of disability correct?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) Claimant applied for MA-P and SDA on July 15, 2008.
- (2) Claimant is 55 years old.
- (3) Claimant has a high school education.
- (4) Claimant is not currently working.

- (5) Claimant has a prior work history consisting of a cashier, a driver for a salvaging company, a landscaper, a maintenance man for an apartment complex, a security guard at a nursing home, and a temporary worker.
- (6) Claimant has a history of motor vehicle accidents. The first accident occurred during claimant's childhood and resulted in installation of a plate in his head and 1 year of hospitalization.
- (7) Claimant also has a history of chronic pancreatitis, hepatitis c, gastritis, heart disease, and hypertension.
- (8) On [REDACTED], claimant was admitted into [REDACTED] with complaints of throat and back pain. Claimant reported experiencing chills, nausea, vomiting, diarrhea, and lost of appetite. Claimant was feverish. Claimant had an arterial O2 saturation of 80% in room air and was treated with CPAP.
- (9) On [REDACTED], claimant was again admitted into [REDACTED] with complaints of shortness of breath, abdominal pain, nausea, vomiting, and diarrhea. The day after admission, claimant developed tachyarrhythmia. Echocardiogram showed cardiomyopathy with an ejection fraction of 30% and moderate tricuspid regurgitation with moderate pulmonary hypertension.
- (10) Claimant was discharged on [REDACTED].
- (11) An Internal Medicine Report was completed by an independent Department examiner on [REDACTED].

- (12) The independent Department examiner states that claimant had normal sinus rhythm, and his lung fields were clear to auscultation and percussion bilaterally. The independent Department examiner noted that there was mild tenderness to palpation in the lower lumbar area and non-pitting edema in both ankles; however, there was no obvious spinal deformity, swelling, or muscle spasm. Claimant was able to get on and off the examination table without difficulty. Claimant was able to ambulate without an assistive device, and claimant showed normal gait and stance.
- (13) On [REDACTED], the independent Department examiner completed another Internal Medicine Report.
- (14) Claimant had normal sinus rhythm and his lung fields were clear to auscultation and percussion bilaterally. Claimant was diagnosed with hypertension and congestive heart failure. The independent Department examiner noted that claimant has minimal right sided weakness because of a stroke in April, 2009. Claimant was able to ambulate without an assistive device and get on and off the table without difficulty. However, claimant has slow gait and normal stance. The independent Department examiner opined that claimant is able to engage in various functional activities, such as sit, stand, stoop, button clothes, and climb stairs; however, claimant can only engage in these activities on an occasional basis.
- (15) On February 25, 2009, the Medical Review Team denied MA-P and SDA.
- (16) On May 20, 2009, claimant filed for hearing.

- (17) On July 15, 2009, the State Hearing Review Team denied MA-P, Retro MA-P and SDA.
- (18) On September 2, 2009, a hearing was held before the Administrative Law Judge.
- (19) After admission of new evidence, claimant's claim was returned to the State Hearing Review Team for redetermination.
- (20) On March 30, 2010, the State Hearing Review Team denied MA-P, Retro MA-P and SDA.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *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).

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 400.10, *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).

Federal regulations require that the Department use the same operative definition of the term "disabled" as is used by the Social Security Administration for

Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

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

This is determined by a five step sequential evaluation process where current work activity, the severity and duration of the impairment(s), statutory listings of medical impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) are considered. These factors are always considered in order according to the five step sequential evaluation, and when a determination can be made at any step as to the claimant's disability status, no analysis of subsequent steps are necessary. 20 CFR 416.920

The first step that must be considered is whether the claimant is still partaking in Substantial Gainful Activity (SGA). 20 CFR 416.920(b). To be considered disabled, a person must be unable to engage in SGA. A person who is earning more than a certain monthly amount (net of impairment-related work expenses) is ordinarily considered to be engaging in SGA. The amount of monthly earnings considered as SGA depends on the nature of a person's disability; the Social Security Act specifies a higher SGA amount for statutorily blind individuals and a lower SGA amount for non-blind individuals. Both SGA amounts increase with increases in the national average wage index. The monthly SGA amount for statutorily blind individuals for 2008 is \$1,570. For non-blind individuals, the monthly SGA amount for 2008 is \$940.

In the current case, claimant has testified that he is not working, and the Department has presented no evidence or allegations that claimant is engaging in SGA. Therefore, the Administrative Law Judge finds that the claimant is not engaging in SGA, and thus passes the first step of the sequential evaluation process.

The second step that must be considered is whether or not the claimant has a severe impairment. A severe impairment is an impairment expected to last 12 months or more (or result in death), which significantly limits an individual's physical or mental ability to perform basic work activities. The term "basic work activities" means the abilities and aptitudes necessary to do most jobs. Examples of these 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. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the Department may only screen out claims at this level which are "totally groundless" solely from a medical standpoint. This is a *de minimus* standard in the disability determination that the court may use only to disregard trifling matters. As a

rule, any impairment that can reasonably be expected to significantly impair basic activities is enough to meet this standard.

In the current case, claimant has presented medical evidence of a heart condition, chronic pancreatitis, and back pain that have impaired claimant's ability to walk and use his right hand and arm, according to the great weight of the evidence by the Department. The Administrative Law Judge finds that this is a significant impairment to claimant's performance of basic physical work activities, and is therefore enough to pass step two of the sequential evaluation process.

In the third step of the sequential evaluation, we must determine if the claimant's impairment is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This is, generally speaking, an objective standard; either claimant's impairment is listed in this appendix, or it is not. However, at this step, a ruling against the claimant does not direct a finding of "not disabled"; if the claimant's impairment does not meet or equal a listing found in Appendix 1, the sequential evaluation process must continue on to step four.

The Administrative Law Judge finds that the claimant's medical records do contain medical evidence of an impairment that meets or equals a listed impairment.

In making this determination, the undersigned has considered listings in Section 4.00 (Cardiovascular System). A listings disability finding for a chronic heart failure requires, among other things, persistent symptoms of heart failure which very seriously limit the ability to independently initiate, sustain, or complete activities of daily living or three or more separate episodes of acute congestive heart failure within a consecutive 12-month period. None of the medical evidence thus far presented to the Administrative Law Judge contains any allegations or indications of the above.

Similarly, none of the medical evidence contains any allegations or indications of an ischemic heart disease. A listings disability finding for ischemic heart disease requires, among other things, sign- or symptom-limited exercise tolerance test demonstrating either decrease of 10 mm Hg or more in systolic pressure, at least 0.1 millivolt (1 mm) ST elevation above resting baseline in non-infarct leads, or documented ischemia at an exercise level equivalent to 5 METs or less on appropriate medically acceptable imaging. At most, claimant's medical records show a Cardiolite stress test on [REDACTED], which showed non-induced ischemia. No further information was provided for the stress test. Therefore, claimant does not meet the listing for ischemic heart disease.

Therefore, the claimant cannot be found to be disabled at this step, based upon medical evidence alone. 20 CFR 416.920(d). We must thus proceed to the next steps, and evaluate claimant's vocational factors.

Evaluation under the disability regulations requires careful consideration of whether the claimant can do past relevant work (PRW), which is our step four, and if not, whether they can reasonably be expected to make vocational adjustments to other work, which is our step five. When the individual's residual functional capacity (RFC) precludes meeting the physical and mental demands of PRW, consideration of all facts of the case will lead to a finding that

- 1) the individual has the functional and vocational capacity to for other work, considering the individual's age, education and work experience, and that jobs which the individual could perform exist in significant numbers in the national economy, or

- 2) The extent of work that the claimant can do, functionally and vocationally, is too narrow to sustain a finding of the ability to engage in SGA. SSR 86-8.

Given that the severity of the impairment must be the basis for a finding of disability, steps four and five of the sequential evaluation process must begin with an assessment of the claimant's functional limitations and capacities. After the RFC assessment is made, we must determine whether the individual retains the capacity to perform PRW. Following that, an evaluation of the claimant's age, education and work experience and training will be made to determine if the claimant retains the capacity to participate in SGA.

RFC is an assessment of an individual's ability to do sustained work-related physical and mental activities in a work setting on a regular and continuing basis—meaning 8 hours a day, 5 days a week, or an equivalent work schedule. RFC assessments may only consider functional limitations and restrictions that result from a claimant's medically determinable impairment, including the impact from related symptoms. It is important to note that RFC is not a measure of the least an individual can do despite their limitations, but rather, the most. Furthermore, medical impairments and symptoms, including pain, are not intrinsically exertional or nonexertional; the functional limitations caused by medical impairments and symptoms are placed into the exertional and nonexertional categories. SSR 96-8p, 20 CFR 416.945 (a).

However, our RFC evaluations must necessarily differ between steps four and five. At step four of the evaluation process, RFC must not be expressed initially in terms of the step five exertional categories of "sedentary", "light", "medium", "heavy", and "very heavy" work because the first consideration in step four is whether the

claimant can do PRW as they actually performed it. Such exertional categories are useful to determine whether a claimant can perform at her PRW as is normally performed in the national economy, but this is generally not useful for a step four determination because particular occupations may not require all of the exertional and nonexertional demands necessary to do a full range of work at a given exertional level. SSR 96-8p.

Therefore, at this step, it is important to assess the claimant's RFC on a function-by-function basis, based upon all the relevant evidence of an individual's ability to do work related activities. Only at step 5 can we consider the claimant's exertional category.

An RFC assessment must be based on all relevant evidence in the case record, such as medical history, laboratory findings, the effects of treatments (including limitations or restrictions imposed by the mechanics of treatment), reports of daily activities, lay evidence, recorded observations, medical treating source statements, effects of symptoms (including pain) that are reasonably attributed to the impairment, and evidence from attempts to work. SSR 96-8p.

RFC assessments must also address both the remaining exertional and nonexertional capacities of the claimant. Exertional capacity addresses an individual's limitations and restrictions of physical strength, and the claimant's ability to perform everyday activities such as sitting, standing, walking, lifting, carrying, pushing and pulling; each activity must be considered separately. Nonexertional capacity considers all work-related limitations and restrictions that do not depend on an individual's

physical strength, such as the ability to stoop, climb, reach, handle, communicate and understand and remember instructions.

Symptom, such as pain, are neither exertional or nonexertional limitations; however such symptoms can often affect the capacity to perform activities as contemplated above and thus, can cause exertional or nonexertional limitations. SSR 96-8.

In the current case, it is undisputed that claimant has some functional limitations. On [REDACTED], an independent Department examiner completed an Internal Medicine Report. The independent Department examiner reported that, while claimant does not require an assistive device for ambulation, claimant showed slow gait. In addition, claimant has minimal right sided weakness after experiencing a stroke in April, 2009. Consistent with the independent Department examiner's observation, claimant testified during his hearing that he has problems with dexterity in his fingers and is unable to write. Although the independent Department examiner reported that claimant is able to stand, bend, stoop, carry, push, and pull, claimant is only able to engage in these activities on an occasional basis. Claimant also testified that he is unable to drive.

From these reports, the Administrative Law Judge concludes that claimant has a disabling impairment when considering the functions of walking, standing, pushing, pulling, carrying and lifting. Claimant has no limitations in sitting. Claimant should avoid climbing. Claimant has few postural limitations (e.g. stooping), and no visual limitations or communicative (hearing, speaking) limitations.

Claimant's PRW includes working as a cashier in a drug store, a maintenance man in an apartment complex, a driver in a salvaging company, a security guard, and a landscaper. These jobs, as typically performed, involve the use of both arms. Several of these jobs require significant walking and/or standing. Other jobs, such as landscaper, require lifting medium to heavy objects using both arms. Therefore, given the functional requirements typically required for these jobs, and claimant's functional limitations as described above, the Administrative Law Judge concludes that claimant does not retain the capacity to perform his past relevant work. Claimant's heart condition prevents him from returning to past medium and heavy work, such as landscaping. Claimant's abnormal gait prevents him from engaging in significant standing and walking, which is required for a cashier position and security guard. Additionally, claimant's inability to drive will preclude him from returning to work as a driver. Therefore, claimant cannot return to his past relevant work.

In the fifth step of the sequential consideration of a disability claim, the Administrative Law Judge must determine if the claimant's impairment(s) prevents claimant from doing other work. 20 CFR 416.920(f). This determination is based upon the claimant's:

- (1) residual functional capacity defined simply as "what can you still do despite you limitations?" 20 CFR 416.945;
- (2) age, education, and work experience, 20 CFR 416.963-.965; and
- (3) the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her limitations. 20 CFR 416.966.

See *Felton v DSS* 161 Mich. App 690, 696 (1987).

At step five, RFC must be expressed in terms of, or related to, the exertional categories when the adjudicator determines whether there is other work that the individual can do. However, in order for an individual to do a full range of work at a given exertional level, such as sedentary, the individual must be able to perform substantially all of the exertional **and nonexertional functions** required at that level. SSR 96-8p. The individual has the burden of proving that they are disabled and of raising any issue bearing on that determination or decision. SSR 86-8.

If the remaining physical and mental capacities are consistent with meeting the physical and mental demands of a significant number of jobs in the national economy, and the claimant has the vocational capabilities (considering age, education and past work experience) to make an adjustment to work different from that performed in the past, it shall be determined that the claimant is not disabled. However, if the claimant's physical, mental and vocational capacities do not allow the individual to adjust to work different from that performed in the past, it shall be determined at this step that the claimant is disabled. SSR 86-8.

For the purpose of determining the exertional requirements of work in the national economy, jobs are classified as "sedentary", "light", "medium", "heavy", and "very heavy". These terms have the same meaning as are used in the *Dictionary of Occupational Titles*. In order to evaluate the claimant's skills and to help determine the existence in the national economy of work the claimant is able to do, occupations are classified as unskilled, semiskilled and skilled. SSR 86-8.

These aspects are tied together through use of the rules established in Appendix 2 to Subpart P of the regulations (*20 CR 404, Appendix 2 to Subpart P, Section 200-204*

et. seq) to make a determination as to disability. They reflect the analysis of the various vocational factors (i.e., age, education, and work experience) in combination with the individual's residual functional capacity (used to determine his or her maximum sustained work capability for sedentary, light, medium, heavy, or very heavy work) in evaluating the individual's ability to engage in substantial gainful activity in other than his or her vocationally relevant past work. Where the findings of fact made with respect to a particular individual's vocational factors and residual functional capacity coincide with all of the criteria of a particular rule, the rule directs a conclusion as to whether the individual is or is not disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 200.00(a).

In the application of the rules, the individual's residual functional capacity, age, education, and work experience must first be determined. The correct disability decision (i.e., on the issue of ability to engage in substantial gainful activity) is found by then locating the individual's specific vocational profile. Since the rules are predicated on an individual's having an impairment which manifests itself by limitations in meeting the strength requirements of jobs, they may not be fully applicable where the nature of an individual's impairment does not result in such limitations, e.g., certain mental, sensory, or skin impairments. 20 CFR 404, Subpart P, Appendix 2, Rule 200.00(c)-200.00(d).

In the evaluation of disability where the individual has solely a nonexertional type of impairment, determination as to whether disability exists shall be based on the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations. The rules do not direct factual conclusions of disabled or

not disabled for individuals with solely nonexertional types of impairments. 20 CFR 404, Subpart P, Appendix 2, Rule 200.00(e)(1).

However, where an individual has an impairment or combination of impairments resulting in both strength limitations and nonexertional limitations, the rules are considered in determining first whether a finding of disabled may be possible based on the strength limitations alone; if not, the rule(s) reflecting the individual's maximum residual strength capabilities, age, education, and work experience provide a framework for consideration of how much the individual's work capability is further diminished in terms of any types of jobs that would be contraindicated by the nonexertional limitations. Furthermore, when there are combinations of nonexertional and exertional limitations which cannot be wholly determined under the rules, full consideration must be given to all of the relevant facts in the case in accordance with the definitions and discussions of each factor in the appropriate sections of the regulations, which will provide insight into the adjudicative weight to be accorded each factor.

Claimant is fifty-five years old, with a high school education and prior work experience performed at the light, medium, and heavy exertional levels. Claimant's exertional impairments likely render claimant able to perform work at the sedentary level. Claimant has abnormal gait, and right sided weakness. Claimant has no limitations on sitting. However, when considering claimant's age, high school education, and history of unskilled work, claimant is considered disabled under the Grid. 20 CFR 404, Subpart P, Appendix 2, Rule 201.00(g).

Therefore, after careful review of claimant's medical records and the Administrative Law Judge's personal interaction with claimant at the hearing, this

Administrative Law Judge finds that claimant's exertional and non-exertional impairments render claimant unable to engage in a full range of even sedentary work activities on a regular and continuing basis. 20 CFR 404, Subpart P, Appendix 2, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986). The Department has failed to provide vocational evidence which establishes that claimant has the residual functional 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, this Administrative Law Judge concludes that claimant is disabled for the purposes of the MA program.

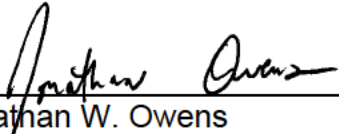
With regard to the SDA program, a person is considered disabled for the purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Other specific financial and non-financial eligibility criteria are found in PEM 261. As claimant meets the federal standards for SSI disability, as addressed above, and alleges an onset date of 2008, the undersigned concludes that the claimant is disabled for the purposes of the SDA program as well.

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 as of April 2008.

Accordingly, the Department's decision is hereby REVERSED and the Department is ORDERED to initiate a review of the application dated July 15, 2008, if not done previously, to determine Claimant's non-medical eligibility. The Department

shall inform Claimant of the determination in writing. The Department shall set this case for review in August 2011.



Jonathan W. Owens
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 07/13/10

Date Mailed: 07/13/10

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.

JWO/dj

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