



STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Claimant

Reg No: 2009-32394
Issue No: 2009
Case No: 
Load No: 
Hearing Date:
October 14, 2009
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted by hearing on October 14, 2009 pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department on July 2, 2009. At the hearing, the Claimant was present and testified. Aspaceia Fisher, FIS, MCW, appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of 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 applied for SDA and MA as of May 29, 2009.
2. Claimant is 5'6" tall and weighs 247 pounds.
3. Claimant is right handed.
4. Claimant is 49 years of age. He will turn 50 in early 2010.

5. Claimant's impairments have been medically diagnosed as asthma (worse in past couple years), COPD, obesity, hypertension, depression, and arthritis in right knee.
6. Claimant's physical symptoms are shortness of breath, pain in right knee, sleep disturbances due to asthma.
7. Claimant's mental symptoms are some difficulty with concentration, sometimes confused, fatigue, looks over his shoulder a lot.
8. Claimant takes the following prescriptions:
 - a) Albuteral inhaler 3x/day
 - b) No nebulizer
 - c) Sleeping Pill
 - d) Naproxen – Knee pain
 - e) Proair 90 mcg inhaler
 - f) Tricylon – allergic rx on body
 - g) QVAR inhaler
 - h) Citalopran – depression, calms him down
 - i) Mirtazapine 15 mg – decongestant for chest
 - j) Loratadine 10 mg – for knee
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 and one and a half years at [REDACTED].
11. Claimant is able to read/write/perform basic math skills.
12. Claimant last worked in November, 2007 as a home caregiver. This job ended after the patient that he cared for 7 years died. The job required that Claimant lift the patient, and bathe, feed and dress him.
13. Claimant has prior employment experience as a general laborer doing work such as folding linen (lifting 75 lbs, bend/stoop, standing all day), dressing out parts for cars (unloading merchandise off truck), rebuilding auto pumps for cars, and boxing video tapes (standing all day, lifting 50-90 lbs., bend/stoop).
14. Claimant testified to the following physical limitations:
 - Sitting: 4-5 hours
 - Standing: 2-3 hours
 - Walking: 2-3 blocks
 - Bend/stoop: Yes, when does a lot
 - Lifting: 50 lbs – several times per day
15. Claimant performs household chores such as cooking, washing dishes and cleaning up. Claimant cleans the bathroom sometimes but no vacuuming or

dusting due to asthma. Claimant takes the trash out but does not do any yard work. Claimant is able to shop for groceries and personal items.

16. Claimant testified that he could do light work, but not work with any dust. Claimant testified that his asthma is bothered by plant pollen so he cannot work outside either.
17. The Department denied Claimant's application for SDA and MA on June 26, 2009.
18. On 7/2/09, the Department received Claimant's hearing request regarding the denial of SDA and MA benefits.
19. The following medical records were reviewed:

██████████ Family Practitioner Medical Exam Report (Exhibit 1, pp. 9-10)

HX: Chronic asthma, frequent exacerbations

LAB FINDINGS: PFT, severe obstructive ventilator defect.

PHYSICAL RESTRICTIONS: Lifting less than 10 lbs occasionally, stand/walk less than 2 hours in 8 hour day, sit less than 6 hours in 8 hr day, no pushing/pulling with hands/arms.

██████████ Psychiatric/Psychological Exam Report (Exhibit 1, pp. 12-21)

Referred for depression.

AFFECT & MOOD: Constricted, sad

DX: Major depressive disorder, single episode, moderate

██████████ Dermatology Clinic (Exhibit 2, pp. 1-4)

Flare of atopic dermatitis possibly due to contact exposure.

██████████ Sleep Clinic (Exhibit 2, pp. 5-6)

Pt was seen at the request of his pulmonologist to whom he presented with shortness of breath. When we'd seen the patient in sleep disorders clinic he had mentioned that he had excessive daytime sleepiness, though he put his Epworth down as 5. He was sleeping about 7 hours at nighttime and was taking 1-hour long naps about twice a week.

DIAGNOSTIC STUDIES:

1. The patient had an echo done ██████████ which showed a normal ejection fraction of 55 to 60%
2. The patient had pulmonary function testing done in ██████████ which showed moderate severe obstructive ventilatory defect and improvement following bronchodilators was noted.
3. The diagnostic PSG in ██████████. This was initially scheduled to be a split night study, but due to the overall mildness of the sleep-disordered breathing, the patient had a diagnostic PSG. The patient's overall AHI was 5 events per hours, this was worse in

REM sleep, REM AHI was 26 events per hour associate with mild oxygen desaturations.

ASSESSMENT AND RECOMMENDATIONS:

1. Mild OSA. Recommend repeat a diagnostic PSG following by an MSLT
2. Obesity
3. Elevated blood pressure

██████████ Pulmonary Clinic (Exhibit 2, pp. 7-8)

Pt seen for shortness of breath on exertion.

ASSESSMENT:

1. Severe persistent asthma. He does not seem to be in an acute exacerbation at this time. Due to his daily symptoms and nocturnal awakening, he would benefit from therapy with inhaled steroids and long-acting beta agonists. Unfortunately, his insurance will not pay for it.
2. Dyspnea

██████████ ER for asthma attack (Exhibit 2, p. 20-26)

Pt presents with shortness of breath, cough, chest pain, chest tightness, leg swelling, unable to sleep, and speaking in short sentences.

DIFFERENTIAL DX: Acute congestive heart failure, asthma-Acute exacerbation, COPD exacerbation, pneumonia, PNEUMOTHORAX, pulmonary embolism.

██████████ and ██████████ – ER for asthma attack (Exhibit 2, pp. 27-36)

Pt was seen in ER on ██████████ for COPD exacerbation. At that time his COPD exacerbation was mild, his chest x-ray was normal. He was discharged on Doxycycline for 7 days, Albuterol p.r.n. and Tylenol. He states that he feels better, however, still has symptoms of chest pain.

DX: COPD. We will prescribe Advair to take on a daily basis.

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 2007. 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 from medical providers showing diagnoses of chronic asthma, obesity, hypertension, and depression. Furthermore, Claimant is also under physical restrictions placed by his physician. Claimant's asthma has required emergency medical intervention three times in the past two years. Therefore, 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 20 CFR Part 40, Subpart P, Appendix 1 (20 CFR 416.920(d), 416.925 and 416.926). 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 3.01 *Chronic Pulmonary insufficiency* 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 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.

Claimant testified to physical limitations. He has also been placed on physical limitations by his physician of lifting less than 10 lbs occasionally, stand/walk less than 2 hours in 8 hour day, sitting less than 6 hours in 8 hour day and no pushing/pulling with hands or arms. Claimant's prior employment, based on his testimony of her job duties would have been considered unskilled and medium in exertional level as all his previous positions required lifting and walking/standing a significant portion of the day. 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 at the limit of sedentary exertional range given his physical limitations. 20 CFR 416.967. This is further supported by the fact that the effects of Claimant's obesity must be taken into consideration:

Obesity is a medically determinable impairment that is often associated with disturbance of the respiratory system, and disturbance of this system can be a major cause of disability in individuals with obesity. The combined effects of obesity with respiratory impairments can be greater than the effects of each of the impairments considered separately. Therefore, when determining whether an individual with obesity has a listing-level impairment or combination of impairments, and when assessing a claim at other steps of the sequential evaluation process, including when assessing an individual's residual functional capacity, adjudicators must consider any additional and cumulative effects of obesity.

20 CFR 404, Subpart P, Appendix 1, Rule 3.00(I).

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 is essentially 50 years of age and as such 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. 20 CFR 404, Subpart P, Appendix 2, Rule 201.00(g). Considering Claimant's medical limitations, this

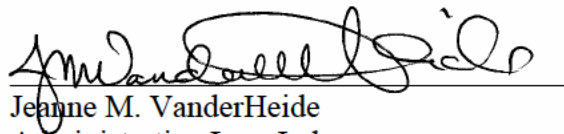
Administrative Law Judge finds that claimant's impairments render him capable of doing only sedentary work. Given Claimant's age, education, and prior work experience of unskilled work, Claimant is disabled by law for the purposes of the programs. 20 CFR 404, Subpart P, Appendix 2, Table 1, Rule 201.12.

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 5/29/09, inclusive of any retroactive benefits and SDA applied for.

Therefore, the department is ordered to initiate a review of the application of May 26, 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 February, 2011.



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

Date Signed: 01/29/09

Date Mailed: 02/02/10

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.

2009-32394/JV

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:

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