

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. 2009-337
Issue No. 2009; 4031
Case No: [REDACTED]
Load No. [REDACTED]
Hearing Date:
February 19, 2009
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

AMENDED 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 February 19, 2009. The Claimant appeared and testified.

The original decision remains in full force except for the following amendment. The review date should be May 2010. The final decision and order shall reflect this change.

ISSUE

Whether the department properly determined the claimant is not "disabled" for purposes of Medicaid (MA) and State Disability Assistance (SDA) program?

FINDINGS OF FACT

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

- (1) The Claimant applied on June 30, 2008 for MA and SDA including retro MA back to 4/08.
- (2) On August 8, 2008, the Department denied the Claimant's application.

(3) On September 15, 2008, the Claimant filed a request for hearing regarding the Department's denial of benefits.

(4) The Claimant is 43 years old.

(5) The Claimant has a 10th grade education.

(6) The Claimant has been employed in janitorial work, factory assembly work and in home health care.

(7) The Claimant suffers with high blood pressure, suffered a stroke, high cholesterol, memory problems, balance problems, back and neck pain, right leg and arm go numb, and hands cramp up.

(8) The Claimant's limitations have not lasted for 12 months or more.

(9) On November 22, 2008, [REDACTED] indicated the Claimant could stand for 30-45 minutes at a time but could not stand for too long. [REDACTED] further indicated the Claimant would be unable to balance or carry weights. Further the Claimant would be unable to use her right hand for any fine work or any repetitive work due to weakness.

(10) On November 22, 2008 [REDACTED] performed a consultative exam and indicated the Claimant still had right side weakness which would make using her right hand difficult. The right hand difficulty would prevent writing or nay fine work or repetitive work. He further opined she could only stand or walk 30-45 minutes at a time and should not be on her feet for too long. Further the Claimant would not be able to carry any weights or balancing.

(11) The Claimant has significant limitations on physical activities involving sitting, standing, walking and lifting.

CONCLUSIONS OF LAW

An administrative hearing was scheduled on the above-mentioned date. During the hearing, this Administrative Law Judge discovered that the Social Security Administration (SSA)

had denied the Claimant's application dated September 18, 2008 with an alleged onset date of April 30, 2008. The Claimant failed to appeal this denial. The medical evidence of record does not show any "other" impairments not considered by SSA nor does the record demonstrate objective findings which would show significant worsening of Claimant's condition. Based upon 42 CFR 435.541, SSA has made a final determination. Therefore a final determination has been made on this matter. Per PEM 260, p.2-3, the Claimant's case regarding MA is hereby dismissed.

Administrative Hearings' jurisdiction ends when the Social Security Administration denies the grant of benefits and an appeal of this determination is not made within 60 days. Therefore, this Administrative Law Judge does not retain jurisdiction in this matter and the Claimant's request for a hearing regarding MA is DISMISSED.

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. Other specific financial and non-financial eligibility criteria are found in PEM 261.

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 CRF 416.905

In determining whether an individual is disabled, 20 CRF 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.

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, claimant is not working. Therefore, claimant is not disqualified for SDA at step one in the evaluation process.

Second, in order to be considered disabled for purposes of SDA, 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 F2d 860, 862 (6th Cir. 1988); *Farris v Sec’y of Health & Human Servs*, 773 F2d 85, 90 (6thCir 1985).

In this case, the claimant has presented sufficient medical data from Doctors to support a finding that claimant has physical limitations on the Claimant’s ability to perform basic work activities see finding of fact number 10. The claimant’s impairment(s) have lasted a continuous period of ninety days or more. Medical evidence has established that claimant has a severe impairment (or combination of impairments) that has more than a minimal effect on claimant’s work activities.

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. Based on the hearing record, the undersigned finds that the claimant’s medical record will not support a finding that the claimant’s impairment(s) is a “listed impairment” or equal to a listed impairment. According to the medical evidence, alone, the claimant cannot be found to be disabled. 20 CFR 416.920(a) (4) (iii). This Administrative Law Judge finds the claimant is not presently disabled at the third step for purposes of the SDA program. Sequential evaluation under step four or five is necessary. 20 CFR 416.905.

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 clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for a recovery and/or medical assessment of ability to do work-related activities or ability to reason and to make appropriate mental adjustments, if a mental disability is being alleged. 20 CRF 416.913. An individual’s subjective

pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908 and 20 CFR 416.929.

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 claimant from doing past relevant work. 20 CFR 416.920(e). Residual functional capacity will be assessed based on your 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. Residual functional capacity 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. See 20 CFR 416.945.

Here, there is sufficient medical evidence of claimant's physical limitations. Because of claimant's physical limitations; and a lifting/carrying limit of less than 5 lbs pounds; the undersigned finds the claimant cannot return to past work as a janitorial, factory assembly or home health care. The undersigned concludes, all these employments involving lifting more than 5 lbs pounds frequently and standing without falling.

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 NW2d 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 does not include the ability to meet the physical exertion demands required to perform sedentary work because “sedentary” work requires a certain amount of walking, standing and carrying items while walking. Appendix 2, Subpart P of Part 404; sedentary work, vocational Rule 201.00, is described as:

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).

201.00 *Maximum sustained work capability limited to sedentary work as a result of severe medically determinable impairment(s).* (a) Most sedentary occupations fall within the skilled, semi-skilled, professional, administrative, technical, clerical, and bench work classifications. Approximately 200 separate unskilled sedentary occupations can be identified, each representing numerous jobs in the national economy. Approximately 85 percent of these jobs are in the machine trades and bench work occupational categories. These jobs (unskilled sedentary occupations) may be performed after a short demonstration or within 30 days.

201.00(4) "Sedentary work" represents a significantly restricted range of work, and individuals with a maximum sustained work capability limited to sedentary work have very serious functional limitations. Therefore, as with any case, a finding that an individual is limited to less than the full range of sedentary work will be based on careful consideration of the evidence of the individual's medical impairment(s) and the limitations and restrictions attributable to it. Such evidence must support the finding that the individual's residual functional capacity is limited to less than the full range of sedentary work.

The undersigned finds sufficient medical evidence to decide claimant is unable to perform sedentary work on a sustained basis for 90 days. This Administrative Law Judge finds the claimant is presently disabled for purposes of the SDA program at step five.

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 State Disability Assistance program.

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

The department is ORDERED to initiate a review of the June 30, 2008 application for SDA benefits to determine claimant's non-medical eligibility. The department shall inform the claimant of the determination in writing. Eligibility for SDA benefits is to be reviewed May 2010.

As indicated above, the Claimant's request for MA is hereby DISMISSED.

/s/
Jonathan W. Owens
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Service

Date Signed: 5/27/09

Date Mailed: 6/1/09

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 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.

JWO

cc:

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