

[REDACTED]

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.: 2009-1268
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
December 22, 2008
Branch County DHS

ADMINISTRATIVE LAW JUDGE: Judith Ralston Ellison

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 December 22, 2008. The Claimant appeared at the Department of Human Service (Department) in Branch County.

The closing date was waived. Additional medical records were obtained and reviewed by the State Hearing Review Team (SHRT). SHRT denied the application. The matter is now before the undersigned for final decision.

ISSUES

Whether the Department properly determined the Claimant is "not disabled" for purposes of Medical Assistance based on disability (MA-P) 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) On August 15, 2008 the Claimant applied for MA-P.

- (2) On September 25, 2008 the Department denied the MA-P application; and on February 24, 2009 the SHRT denied the application finding the Claimant was capable of performing past relevant work per 20 CFR 416.920(e).
- (3) On September 30, 2008 the Claimant filed a timely hearing request to protest the Department's determination.
- (4) Claimant's date of birth is [REDACTED]; and the Claimant is forty-two years of age.
- (5) Claimant completed grade 12 and service in the military; and can read and write English and perform basic math.
- (6) Claimant last worked in August 2008 as an oil shop assistant manager, and before a logistics manager and [REDACTED] shop manager for over 15 years.
- (7) Claimant has alleged a medical history of [REDACTED] back surgery followed by degenerative disc disease and arthritis, left leg pain with swelling after deep venous thrombosis (DVT), right/left knee surgery and currently untreated bipolar disorder; and untreated hypertension, diverticulosis.
- (8) [REDACTED], in part:

Admitted with DVT and was put on anticoagulation treatment. Past history of knee and back surgery. Physical Examination: [All within normal limits.] Except left calf slightly tender but not swollen. A duplex revealed superficial thrombophlebitis without evidence of DVT; and he was discharged home with low dose Coumadin to follow up in one month. [REDACTED].
Department Exhibit (DE) 1, pp. 9-26
- (9) [REDACTED], in part:

MRI lumbar spine for low back pain with radiculopathy.
IMPRESSION: Fairly severe degenerative disc disease and lumbar spondylopathy especially at L4-5. No evidence of disc herniation or convincing neural impingement. Extensive bone marrow signal changes at L4-L5 vertebral body of uncertain etiology, probably chronic. [REDACTED]. DE A, pp. 1-2.

(10) [REDACTED], in part:

Has long history of degenerative disc disease in spine. One surgery was in [REDACTED]. [REDACTED] MRI demonstrated severe degenerative disc disease in lumbar spine at L2-L3, L3-L4 with smaller annular bulging and spurring defects at L1-L2, L3-L4. He has moderate to severe degree of spinal stenosis at L3-L4.

Has been diagnosed with Factor V Leyden (Blood Clotting disorder) making him prone to blood clotting. Due to these conditions, he should not stand for more than one hour or lifting more than 10 pounds. Should not do sedentary work due to fact blood tend to clot if he is not mobile for extended periods of time.

[REDACTED]

CURRENT DIAGNOSIS: Factor V leyden. Spinal stenosis, Severe DDD lumbar spine. HTN

NORMAL EXAMINATION AREAS: Respiratory;
Cardiovascular, Neuro, Mental.

FINDINGS: Musculoskeletal: mild left lower extremity swelling.

CLINICAL IMPRESSION: Stable.

PHYSICAL LIMITATIONS: Limited. Lifting/carrying less than 10 pounds 2/3 of 8 hour day; stand and/or walk less than 2 hours in 8 hour day; sit about 6 hours in 8 hour day; No assistive devices are needed; use of both hand/arms for simple grasping, reaching, pushing/pulling, fine manipulating; use of both feet/legs for operating controls. Can meet own needs in home. MENTAL LIMITATIONS: None. Medications: Coumadin, Zestoreltc, Norco, Ultram. [REDACTED]. DE B, pp. 1-3.

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.

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity (SGA). 20 CFR 416.920(b) In this case, under the first step, Claimant testified to not performing SGA since August 2008. Therefore, Claimant is not disqualified for MA at step one in the evaluation process.

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 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 medical evidence of physical limitations. There was no medical evidence of mental impairments. See finding of facts 8-10. The medical evidence has established that Claimant has physical limitations that has more than a minimal effect on basic work activities; and have lasted continuously for over twelve months. See medical records for [REDACTED] submitted without being numbered. It is necessary to continue the evaluation under step three.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant’s physical impairments are listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Based on the hearing record, and the lack of medical records, the undersigned

finds that the Claimant's medical record will not support findings that his physical impairment is "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 (Listing) discusses the analysis and criteria necessary to a finding of a listed impairment. In this matter, the medical records establish the Claimant's impairment to be a lumbar spine disorder and a blood clotting disorder. There are no medical records establishing impairment due to the blood clotting disorder. ██████████ opines no sedentary work due to a chance of blood clots. But the undersigned thinks the doctor did not know what "sedentary" under the law means; and the doctor did not define her version of "sedentary". There was no other confirmation of the doctor's opinion. On physical examination in the ██████████ hospitalization, there was no evidence of a physical dysfunction.

Appendix 1 of Subpart P of 20 CFR, Part 404; Listing 1.00, *Musculoskeletal System* evaluates listing level impairments applicable to the Claimant's impairment.

After reviewing the criteria of the listings, the undersigned finds the Claimant does not meet the listing requirements. The medical records report that the Claimant has some function limits prescribed by ██████████. But this does not establish loss of function. The Claimant drives a car, does some housework and is independent in ADLs. The Claimant has full use of upper and lower extremities. See finding of fact 10.

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. Sequential evaluation under step four or five is necessary. 20 CFR 416.905.

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 (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. See 20 CFR 416.945.

Claimant's past relevant work was management and training positions. At hearing the Claimant testified he can't stand 13 hours a day at the past relevant work. The undersigned finds this testimony credible and accepts that the Claimant cannot return to past relevant work. Thus an evaluation of the Claimants physical limitations will be made under step five in the analysis.

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 is functionally limited to sedentary work. Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines 20 CFR 416.967(a):

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like

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.

JRE/jlg

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