

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.: 2009-1287
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
December 22, 2008
Kent 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 Kent County.

The record was left open to obtain additional medical information. An Interim Order was issued for new medical records, which were received and reviewed by the State Hearing Review Team (SHRT). They denied the application. This 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) and State Disability Assistance (SDA) programs?

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's benefits for MA-P and SDA were re-determined in January 2008.
- (2) On September 15, 2008 the Department denied the application; and on February 9, 2009 the SHRT denied the application finding the medical records established an ability to perform sedentary work under Vocational Rule 201.21.
- (3) On September 23, 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-four years of age.
- (5) Claimant completed grade 12 plus military service; and can read and write English and perform basic math.
- (6) Claimant last worked in 2003 as a truck driver and was injured, returned to work and was injured again; and since January 2007 to present, works part-time eight hours a week at a pool hall handing out balls, taking money, and stands and sits and moves around, earning \$7.50 per hour; with monthly income of less than \$250 per month.
- (7) Claimant has alleged a medical history of back pain with epidural injections without pain relief, right leg buckles, right and left rotator cuff problems with surgery on right, hypertension and diabetes; and denies mental impairments.
- (8) February 2009, in part:

In January 2007, the Claimant was previously approved for benefits due to back condition post laminectomy syndrome, lumbar radiculopathy and neuropathic pain. Current records report his medical condition has improved somewhat. He still has back pain but there was no motor or sensory deficit. This represents improvement to the point he should be capable of performing

sedentary work with the ability to alternate sitting and standing with normal breaks and lunch. The medical record does not demonstrate any other impairment that would impose significant limitations. SHRT.

(9) April and December 2008, in part:

April: Last seen over one year ago. Pain confined to lumbosacral area. No right sciatica and reports right lower extremity periodically gives out if he stands for long period of time and will occasionally stumble but not associated with sciatic pain. Health is otherwise good. On exam today has mild lumbosacral myofascial tenderness. Straight leg raising is negative. Knee jerks are 2+ right ankle jerk is absent but left is normal. No motor deficit. Recent MRI show various degrees of disc desiccation, disc bulging and disk space narrowing. Spinal canal is patent. No neural impingement at L4-5. Small protrusion has apparently resolved and this correlates with resolution of right sciatica. No use for additional surgery now. Principal pain generator is arthritis. [REDACTED], MD.

December: Unresolved problem list: BPH, Degenerative Arthritis of Lumbar Spine, Chronic pain Syndrome, Hyperlipidemia, Benign essential hypertension, Tobacco Abuse, Migraine headaches, Eczema, Hyperglycemia, Elevated Liver Enzymes, Microalbuminuria, Radicular Neuropathy, Myofascial pain and Uncontrolled Diabetes Mellitus Type II.

Markedly antalgic gait favoring right leg and his knee seems to buckle. Pain on straight leg raising at 45 degrees.

Hip maneuvers, dorsalis pedis pulses, distal strength of right leg, arm strength, tone, arm reflexes, knee jerks, finger to nose, HEENT, shoulder shrug, alertness, orientation, recent and remote memory, fund of knowledge: [normal]

EMG was normal. MRI lumbar spine showed epidural fibrosis on right at L5-S1 and there was distortion of thecal sac low on the right but no disc herniations and no definite surgical issues. Epidural fibrosis is difficult to deal with and HE might want to consider other pain options such as spinal cord stimulator or others from pain clinic. He would have difficulty getting up and moving around. [REDACTED], MD.

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 performing SGA from January 2007 to present time. SGA amount is \$250 by the Claimant’s testimony. 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 (6th Cir 1985).

In this case, the Claimant the sufficient medical evidence indicates physical impairments associated with pain. In this case, the physical impairments that have more than a minimal effect on basic work activities. But the medical records also support improvement in the musculoskeletal impairment for which benefits were originally granted. The medical evaluators

opined there was no surgical procedures necessary and the Claimant had other options for pain. Pain in and of itself is not a physical impairment under this law.

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.

There was no medical evidence of other impairments causing physical or mental limitations. Appendix I, Listing of Impairments (Listing) discusses the analysis and criteria necessary to a finding of a listed impairment. The undersigned's decision was based on Listing 1.00 *Musculoskeletal Disorders* based on appropriate medical testing results and clinical examination. There were no medical records establishing severe loss of the ability to physically function according to 1.00Ba. See finding of fact 9.

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 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 Claimant submitted several affidavits from witnesses to the right leg stumbling. Most of the witnesses reported slow walking and limping. The witness reports were presented in the same form and substance as if pre-prepared. Slow walking and limping are not sufficient to decide disability. These type symptoms can be seen on others walking in the malls; and the Claimant is overweight and has the ability to drive 3-4 times a week; an activity requiring competent operation and coordination of both upper and lower extremities.

Here, the medical findings were essentially normal for all body systems except pain and episodic stumbling due to right leg. The Claimant testifies to the use of a cane held in his right hand. There were no medical records that established loss of left leg and upper extremity functions. [REDACTED] notes the Claimant reporting loss of right left function episodically when standing for long periods of time. Standing long periods of time is inconsistent with the Claimant's testimony of this symptom; and not evident in the medical records except by the Claimant's reports.

There were no medical records of medical treatment for any injury occurring due to stumbling; and it is really unknown whether the stumbling is related to the medical impairment at issue. The medical evidence shows medical improvement according to 20 CFR 416.993. See finding of fact 9. [REDACTED] did not specify his reasons for evaluation; and it is not demonstrated in the medical records submitted. But the medical facts indicate the Claimant cannot return to past work as a truck driver.

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 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 forty-three is considered a *younger individual*; a category of individuals age 18 to 49. Under Appendix 2 to Subpart P: Table No. 1—Residual Functional Capacity: Maximum Sustained Work Capability Limited to Sedentary Work as a Result of Severe Medically Determinable Impairment(s), Rule 201.27, for younger individual, age 18 to 49; education: high school graduate or more; previous work experience, unskilled or none; the Claimant is "not disabled" per Rule 201.27.

It is the finding of the undersigned, based upon the medical data and hearing record that Claimant is “not disabled” at the fifth step.

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 insufficient medical evidence to support a finding that Claimant’s impairments meet the disability requirements under SSI disability standards, and prevents other work activities for ninety days. This Administrative Law Judge finds the Claimant is “not disabled” for purposes of the SDA program.

DECISION AND ORDER

The Administrative Law Judge, based on the findings of fact and conclusions of law, decides that the Claimant is “not disabled” for purposes of the Medical Assistance and State Disability assistance program.

It is ORDERED; the Department’s determination in this matter is AFFIRMED.

/s/

Judith Ralston Ellison
Administrative Law Judge
For Ishmael Ahmed, Director
Department of Human Services

Date Signed: 05/14/09

Date Mailed: 05/15/09

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.

JRE/jlg

cc:

