

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: 2009-15244

Issue No: 2009

Case No: ██████████

Load No: ██████████

Hearing Date:

April 30, 2009

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

A hearing was held on April 30, 2009 pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department. At the hearing, the Claimant was present and testified. ██████████ of ██████████. was present and represented Claimant. Tanya Bazile, 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 filed for MA on November 13, 2008.
2. Claimant is 5'6" tall and weighs 263 pounds.
3. Claimant is 54 years of age.
4. Claimant's impairments have been medically diagnosed as a stroke in ██████████, diabetes, diabetic neuropathy, hypertension, obesity and early dementia.

5. Claimant's physical symptoms are shakes; pulsating pain in feet that lasts for a minute and then stops; difficulty walking; problems sleeping and vision problems.
6. Claimant's mental symptoms are decreased memory, confusion and early dementia.
7. Claimant takes the following prescriptions:
 - a) Lexapro
 - b) Verapamil HCl
 - c) Lopd/Gemfibrozil
 - d) Zocor/Simvastatin
 - e) Liseinopril
 - f) Aspirin
 - g) Prinzide/hydrocholth
 - h) Glucophage/metformin
 - i) Zatac – not on right now
8. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
9. Claimant has a 9th grade education and was enrolled in special education classes.
10. Claimant is able to read, write and do some basic math skills.
11. Claimant last worked in [REDACTED] delivering newspapers. This required walking 21 blocks. Claimant left after having his stroke. Claimant's previous employment includes odd jobs such as mowing grass.
12. Claimant is capable of the following residual functional capacity:
 - Sit - a few hours and then has to get up
 - Stand – a couple hours
 - Walk – a couple blocks
 - bend/stoop - none
 - grip/grasp - none
13. Claimant performs household chores such as washing dishes and taking the garbage out. Claimant lives with his brothers and they perform all the cooking and other household chores.
14. The Department found that Claimant was not disabled and denied Claimant's application in November, 2008
15. Medical records examined are as follows:

[REDACTED] Internal Medicine, Medical Exam Report, [REDACTED]
(Exhibit 4)

PHYSICAL LIMITATIONS: Lifting less than 10 lbs., walking less than 2 hrs in 8 hour work day, no repetitive actions.

MENTAL LIMITATIONS: sustained concentration

Internal Medicine Rx Note (Exhibit 3)

“Patient is unable to work due to diabetic neuropathy and seizure disorder as well as early dementia. H/o CVA”

Admission 9/25/08 – 9/30/08, in part (Exhibit 1, pp. 3-16, 29-37A)

DIAGNOSES: diabetes mellitus, cerebrovascular accident, hypertension, hypokalemia (low potassium), hyperlipidemia, obesity.

Patient presented to ER because of shakiness, especially on the right side of the body. Elevated blood sugar was found and patient admitted.

Exercise Myocardial Perfusion Imaging Report (Exhibit 2)

1. Normal myocardial perfusion study.
2. No symptoms during the stress test.
3. Nonischemic TCG response to the level of exercise, good blood pressure response to exercise, low exercise capacity.
4. Mild global hypokinesia of the left ventricle with the ejection fraction of 48%.

Echocardiogram Report (Exhibit 2)

1. Normal left ventricle dimensions with well-reserved left ventricular systolic function. Ejection fraction is 57%.
2. Mildly enlarged left atrium
3. Normal right atrium and right ventricular dimensions
4. Mitral valve appears normal with good opening
5. Aortic valve appears normal
6. Pulmonic valve is partially seen, appears normal
7. No evidence of pericardial effusion

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, he is not disabled regardless of how severe his physical and mental impairments are and regardless of

his 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 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 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 history of a stroke in [REDACTED]. Claimant currently suffers from early dementia, diabetes and diabetic neuropathy. Claimant’s physician has imposed physical limitations in terms of sitting, standing, walking, lifting and sustained concentration.

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 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.

Appendix I, Listing of Impairments discusses the analysis and criteria necessary to a finding of a listed impairment. The Listings 4.01 *Cardiovascular System* and 9.08 *Diabetes mellitus* were 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's doctor indicated that Claimant was unable to work. However, a statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e). Rather, the Claimant's specific limitations must be evaluated. Claimant has been placed on physical limitations by his primary care physician including lifting up to 10 lbs occasionally and standing/walking less than 2 hours in an 8 hour work day. Claimant has been prescribed a 4 prong cane. In addition, Claimant's physician also indicated that Claimant has limitations in sustained concentration.

Claimant's prior employment, based on his testimony of his job duties would have been considered unskilled and light in exertional level as it required a significant amount of walking/standing. 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).

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 at fifty-four years 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 of 54 years old, 9th grade education, and prior work experience of unskilled work delivering newspapers and mowing lawns, Claimant is disabled for the purposes of the programs by the transferable work tables. 20 CFR 404, Subpart P, Appendix 2, Table 1.

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 September 13, 2008.

Therefore, the department is ORDERED to initiate a review of the application of September 13, 2008, 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 August 2010.

/s/

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

Date Signed: 08/20/09

Date Mailed: 08/24/09

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 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:

[REDACTED]