

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.: 2009-1536
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
December 10, 2008
Macomb County DHS (20)

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, the Claimant, his wife [REDACTED] and representative [REDACTED] appeared at a hearing held on December 10, 2008 at the Department of Human Service (Department) in Macomb County.

The closing date was waived. Additional medical records were requested from the representative by Interim Order. The representative notified the undersigned that new records were unavailable. The record closed. The matter is now before the undersigned for final decision.

On May 7, 2008, the Claimant fractured his ankle and had ORIF surgery; and submitted an MSA 2565-C application June 9, 2008. This application was submitted after the Michigan Review Team (MRT) denied the September 2006 application. There was no evidence that the MRT reviewed or denied the MSA-2565-C application; and for this reason the undersigned will not consider this medical evidence because there was no evidence of a denial of this application by MRT.

ISSUES

Whether the Department properly determined the Claimant is “not disabled” for purposes of Medical Assistance based on disability (MA-P) program and retroactive MA-P for the months of June, July and August 2006 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) On September 27, 2006 the Claimant applied for MA-P.
- (2) On May 27, 2008 the Department denied the application; and on October 24, 2008 SHRT denied the application finding the medical records supported the capacity to perform a wide range of medium work without heavy and frequent lifting, stooping and crouching.
- (3) On August 19, 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 fifty-eight years of age.
- (5) Claimant completed high school in [REDACTED] has resided in the US for 31 years; and can read and write English as demonstrated at the hearing on the record and perform basic math
- (6) Claimant last worked in 1998 as a machine operator, at [REDACTED] and making curtains.
- (7) Claimant has alleged a medical history of heart attack in June 2006; sciatic nerve problems, May 2008 left ankle fracture and back pain down right leg.
- (8) June 2006, in part:

June: History of multiple risk factors including heavy smoking for several years and drinking alcohol for cardiovascular disease admitted with chest pain and

unstable angina with myocardial infarction (MI). Emergent cardiac catheterization and coronary angiography with normal ejection fraction; found to have obstruction left circumflex artery for which had successful angioplasty and stenting. Also had obstruction of left anterior descending artery and underwent successful angioplasty and stenting following the MI. No post intervention complications and discharged in five days with follow up in tow to three weeks and instructions and medications: aspirin, Plavix, Lopressor, Vasotec, Zocor and Indur. Diet, exercise and activities discussed with family.

June: CURRENT DIAGNOSIS: ASHD with history of recent MI.
NORMAL EXAMINATION AREAS: General; Respiratory; Cardiovascular, Abdominal, Musculoskeletal, Mental.
FINDINGS: Cardiovascular: [Illegible] . . . had MI. Neuro: [Illegible.]
CLINICAL IMPRESSION: Improving/Stable.
PHYSICAL LIMITATIONS: No physical limitations. Lifting/carrying up to 25 pounds 2/3 of 8 hour day; stand and/or walk about 6 hours in 8 hour day; assistive devices are not medically 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: ASA, Plavix, Zocor, Lopressor. [REDACTED] Department Exhibit (DE) 1, pp. 45-54 and 25-39.

(9) April 2007, in part:

April: In our office with history of ASHD. No chest pain, no shortness of breath, no palpitations. PHYSICAL EXAMINATION: Vital signs stable. No jugular venous distension, no carotid bruits. Heart S1, S2 present, regular rate and rhythm without gallops. Lungs Clear to auscultation anteriorly and posteriorly. Abdomen soft. Extremities, with no calf tenderness. Plan: Continue aspirin and Plavix and atenolol and lipitor. Return to office 4-6 months and scheduled for stress test. [REDACTED]

(10) April 2008, in part:

Independent Clinical Examination: HISTORY: C/O lower back pain for ten years radiating down right leg, pain right knee joint. Can walk two to three blocks at street level, climb flight of stairs and stand for one-half hour. Can do household chores. Using both hands can lift 10-20 pounds from the floor and carry distance of 10-20 feet. Using Motrin only when needed. Hypertensive and taking medications. Had angioplasty and stint in June 2006 and has had not more chest pain since; and no history of palpitations, swelling of the legs or cardiac failure. Smoking 20 cigarettes a day and drinking wine.

PHYSICAL EXAMINATION: HT 66", WT 161, BP 130/80, vision without glasses right 20/50, left 20/20. Eye fundi are normal. HEENT, Neck, CVS, Chest,

Abdomen, Extremities, Spine, Bones & Joints, Nervous system: [All within normal limits.] Except: all movements of lumbar spine are painful and some are restricted. Mild crepitus right knee joint. Cannot squat more than 80% of distance. Asymptomatic of post coronary angioplasty and stint insertion. Hypertension well controlled. No ambulatory difficulties. [REDACTED] De 1, pp. 15-16.

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 1998 as a machine operator. But on performance of medical decision making; the SHRT submitted additional data from the Social Security Administration (SSA). The SSA data vocational information indicates job title as “made draperies” from 1996-1997. There was no additional information. Thus, the 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 and testimony of a MI with angioplasty and stenting [REDACTED] completed a DHS-49, after the five day hospital treatment; and found no physical/mental limitations. See finding of fact 8-9. In April 2008, [REDACTED] Claimant to be asymptomatic post angioplasty and stenting. But found some painful lumbar spine movements and restrictions. See finding of fact 10. There were no medical records in June 2006 establishing lumbar spine painful movements and restrictions. See finding of facts 8-9.

So based the medical evidence the Claimant has a physical impairment that has more than a minimal effect on basic work activities due to the back problems. Analysis and evaluation under step three will continue.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the claimant's physical and mental impairments are 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 physical impairments 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 (Listing) discusses the analysis and criteria necessary to a finding of a listed impairment. In this matter, the medical records established coronary artery stenosis resolved in June 2006 with angioplasty and stenting. [REDACTED] found no physical limitations, and no need for walking aid. [REDACTED] found the Claimant asymptomatic of coronary artery disease post angioplasty/stenting. This there was no medical

evidence of cardiovascular impairments by either late June 2006 or April 2008. See finding of fact 8-10. At hearing the Claimant testified to continued use of the medications Plavix, aspirin, blood pressure medication, and medicine for high cholesterol.

██████████ described lumbar back painful movements and restrictions. Under Appendix 1 of Subpart P of 20 CFR, Part 404, Listing 1.00 Musculoskeletal System is met if there is medical evidence of a loss of function of the upper or lower extremities an trunk. There was no evidence of loss of function in the medical records. More important, there was no appropriate medical testing establishing any causation for the Claimant's lumbar complaints.

Therefore, the undersigned finds the Claimant's medical records do not establish the criteria, severity and intent of the listings under Appendix 1 of Subpart P of 20 CFR, Part 404.

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 capacities (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 making drapes and factory work. The record was inconsistent in confirming information, i.e. did the Claimant last work in 1996, or 1998; and in which job did the Claimant last work. But at hearing the Claimant testified to drape making last

performed in 1998. At hearing the Claimant testified he could not return to past relevant work operating a machine. As noted earlier, there was no appropriate medical testing establishing causation for lumbar complaints.

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 totality of 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 medium work. See finding of facts 8-10.

Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines 20 CFR 416.962(a):

203.00 Maximum sustained work capability limited to medium work as a result of severe medically determinable impairment(s). (a) The functional capacity to perform medium work includes the functional capacity to perform sedentary, light, and medium work. Approximately 2,500 separate sedentary, light, and medium occupations can be identified, each occupation representing numerous jobs in the national economy which do not require skills or previous experience and which can be performed after a short demonstration or within 30 days.

(b) The functional capacity to perform medium work represents such substantial work capability at even the unskilled level that a finding of disabled is ordinarily not warranted in cases where a severely impaired individual retains the functional capacity to perform medium work. Even the adversity of advanced age (55 or over) and a work history of unskilled work may be offset by the substantial work capability represented by the functional capacity to perform medium work.

Claimant at fifty-eight is considered *advanced age*; a category of individuals age 55 and over. Under Appendix 2 to Subpart P: Table No. 1—Residual Functional Capacity: Maximum Sustained Work Capability Limited to medium work as a Result of Severe Medically Determinable Impairment(s), Rule 203.11, for individuals of *advanced age*, over 55; education: limited or less [Testimony to high school in ██████████ and residence in US for 31 years; and demonstrated ability to read at hearing]; previous work experience, unskilled; the Claimant is “not disabled” per Rule 203.11.

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

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 based on disability programs.

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: March 12, 2009

Date Mailed: March 12, 2009

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.

cc:

