

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: 2009-15745

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

October 8, 2009

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

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, an in person hearing was held on October 8, 2009. Claimant appeared and testified.

ISSUE

Whether the Department of Human Services (Department) properly determined that the Claimant is not "disabled" for purposes of the Medical Assistance (MA) program?

FINDINGS OF FACT

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

1. On October 17, 2008, the Claimant applied for MA-P and retro MA.
2. On October 28, 2008, the Department denied the Claimant's application.
3. On January 23, 2009, the Claimant filed a request for hearing regarding the Department's denial of benefits.

4. The Claimant is 45 years old.
5. The Claimant has an 11<sup>th</sup> grade education.
6. The Claimant's work history is unskilled as a cook, mechanic helper and tow truck driver.
7. The Claimant suffers with Diabetes, Chronic obstructive Pulmonary disease, morbid obesity, coronary artery disease, lumbar radiculopathy, atherosclerotic heart disease, hypertension, central canal stenosis (pg 8 of a), chronic incontinence, asthma, sleep apnea.
8. The Claimant's limitations have lasted for 12 months or more.
9. The Claimant's Body Mass Index (BMI) is 52.2.
10. The Claimant has significant limitations on physical activities involving sitting, standing, walking and lifting.

#### 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 (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *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).

In order to receive MA benefits based upon disability or blindness, the claimant must be disabled or blind as defined in Title XVI of the Social Security Act (20 R 416.901). The Department, being authorized to make such disability determinations, utilizes the SSI definition of disability when making medical decisions on MA applications. MA-P (disability), also is

known as Medicaid, which is a program designated to help public assistance claimants pay their medical expenses.

The law defines disability as the inability to do substantial gainful activity (SGA) 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 CFR 416.905).

Because disability must be determined on the basis of medical evidence, Federal regulations have delineated a set order entailing a step sequential process for evaluating physical or mental impairments. When claimant is found either disabled or not disabled at any point in the process, the claimant is not considered further.

Addressing the following factors:

The first factor to be consider is whether the Claimant can perform Substantial Gainful Activity (SGA) defined in 20 CFR 416.920(b). In this case, the Claimant is not working. Therefore, the Claimant is not disqualified at this step in the evaluation.

The second step to be determined in considering whether the Claimant is considered disabled is whether the severity of the impairment. In order to qualify the impairment must be considered severe which is defined as an impairment which significantly limits an individual's physical or mental ability to perform basic work activities. Examples of these include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, 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).

In this case, the Claimant's medical evidence of record supports a finding that Claimant has significant physical and mental limitations upon Claimant's ability to perform basic work activities such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling in a routine work setting. Medical evidence has clearly established that the Claimant has an impairment (or combination of impairments) that has more than a minimal effect on the Claimant's work activities. See Social Security Rulings: 85-28, 88-13, and 82-63.

The Claimant testified he suffers with ongoing problems such as shortness of breath, chest pain, headaches, fatigue, lower back pain, uses a cane to walk, can walk 20 feet, has to lean forward when sitting due to back pain, unable to sit straight up, can't sit for any period of time comfortably, can stand for 2-3 minutes with a cane, can lift less than 5 lbs, some concentration issues, stays home most of the time, left hand numbness and weakness, swelling in right leg, elevates legs throughout the day, can't bend over, needs help with self care, medications cause him to be a little out of it, and uses oxygen daily.

In the third step of the analysis, 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. This Administrative Law Judge 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. See Appendix 1 of Subpart P of 20 CFR Part 404, Part A.

Accordingly, the Claimant cannot be found disabled based on medical evidence alone. 20 CFR 416.920(d).

Social Security Ruling 02-01 directs adjudicators to consider that the combined effects of obesity with other impairments may be greater than the non-obesity impairment alone. The National Institute of Health Clinical Guidelines for Obesity defines three levels of obesity. Level I includes Body Mass Index (BMIs) of 30.0-34.9, Level II includes BMIs of 35.0-39.9 and Level III extreme obesity is considered over 40.0. Obesity at Level III represents a condition which creates the greatest risk for developing obesity related impairments. The Claimant's weight was 374lbs and he is 5'11 in height. The Claimant's obesity as measure by his BMI may be calculated using the Center for Disease Control and Prevention Body Mass Index calculation, found at:

[http://cdc.gov/nccdphp/dnpa/bmi/adult\\_BMI/english\\_bmi\\_calculator/bmi\\_calculator.htm](http://cdc.gov/nccdphp/dnpa/bmi/adult_BMI/english_bmi_calculator/bmi_calculator.htm),

it is possible to calculate the Claimant's BMI. The formula for calculating BMI is as follows:

Calculate BMI by dividing weight in pounds by height in inches squared and multiplying by a conversion factor of 703. This formula as applied to the Claimant's height and weight yields a BMI 52.2, or Level III obesity. This level of obesity surely impacts the Claimant's COPD, diabetes, CAD, hypertension and central canal stenosis.

Social Security Ruling SSR-02 provides in pertinent part:

Because there is no listing for obesity, we will find that an individual with obesity "meets" the requirements of a listing if he or she has another impairment that, by itself, meets the requirements of a listing. We will also find that a listing is met if there is an impairment that, in combination with obesity, meets the requirements of a listing. For example, obesity may increase the severity of coexisting or related impairments to the extent that the combination of impairments meets the requirements of a listing. This is especially true of musculoskeletal, respiratory, and cardiovascular impairments. It may also be true for other coexisting or related impairments, including mental disorders.

The fourth stage of the analysis to be considered is whether the Claimant has the ability to perform work previously performed by the Claimant within the past 15 years. The trier of fact

must determine whether the impairment(s) presented prevent the Claimant from doing past relevant work. In the present case, the Claimant's prior work was in general labor positions. This position required standing and sitting for periods of time. The Claimant's current medical condition precludes this type of ongoing activity. In addition, this Administrative Law Judge finds, based on the medical evidence and objective, physical, and psychological findings, that the Claimant is not capable of the physical required to perform any such position. 20 CFR 416.920(e). The medical records demonstrate this is more than a minimal impact on his abilities.

In the final step of the analysis, the trier of fact must determine: if the Claimant's impairment(s) prevent the Claimant from doing other work. 20 CFR 416.920(f). This determination is based upon the Claimant's:

1. residual functional capacity defined simply as "what can you still do despite your limitations? 20 CFR 416.945;
2. age, education, and work experience, 20 CFR 416.963-965; and
3. the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite her limitations. 20 CFR 416.966.

See *Felton v DSS*, 161 Mich. App 690, 696 (1987). Once the Claimant makes it to the final step of the analysis, the Claimant has already established a prima facie case of disability. *Richardson v Secretary of Health and Human Services*, 732 Fd2 962 (6<sup>th</sup> Cir, 1984). Moving forward the burden of proof rests with the state to prove by substantial evidence that the Claimant has the residual function capacity for substantial gainful activity.

After careful review of the Claimant's medical record and the Administrative Law Judge's personal observation of the Claimant at the hearing, this Administrative Law Judge finds the Claimant's exertional and non-exertional impairments render the Claimant unable to engage in a full range of sedentary work activities on a regular and continuing basis. 20 CFR 404,

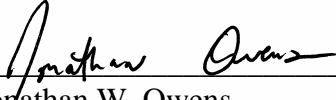
Subpart P. Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v. Heckler*, 743 F 2d 216 (1986).

The record supports a finding that the Claimant does not have the residual functional capacity for substantial gainful activity. The Department has failed to provide vocational evidence which establishes that, given the Claimant's age, education, work experience, there are significant numbers of jobs in the national economy which the Claimant could perform despite Claimant's limitations. Accordingly, this Administrative Law Judge concludes that 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 as of August 2008.

Accordingly, the Department decision is hereby REVERSED and the Department is ORDERED to initiate a review of the application dated October 17, 2008, if not done previously, to determine Claimant's non-medical eligibility. The Department shall inform Claimant of the determination in writing. The Claimant was subsequently approved by MRT on June 17, 2009 with benefits granted back to April 2009. This case shall be reviewed in accordance with the MRT decision.

  
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Jonathan W. Owens  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: 12/01/09

Date Mailed: 01/13/10

**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/dj

cc:

