

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.: 2009-1683
Reg. No.: 2008-23307
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
December 22, 2008
Wayne County DHS (49)

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 and her representative appeared at the Department of Human Service (Department) in Wayne County.

New medical records were requested by Interim Order; and reviewed by the State Hearing Review Team (SHRT). The application was denied; and this matter is before the undersigned for final decision.

ISSUE

Whether the Department properly determined the Claimant was "not disabled" for purposes of Medical Assistance based on disability (MA-P), retroactive MA-P for the months of February, March and April 2008 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) On June 26, 2008 the Claimant applied for MA-P and SDA.
- (2) On September 29, 2008 the Department denied the application; on March 18, 2009 the SHRT guided by Vocational Rule 202.20 denied the application finding the medical records indicated a capacity to perform other light work.
- (3) On September 29, 2008 the Claimant filed a timely hearing request to protest the Department's determination.
- (4) Claimant's date of birth is [REDACTED]; and Claimant is forty-five years of age.
- (5) Claimant completed grade 10 and a GED; and can read and write English and perform basic math.
- (6) Claimant was last employed in 2001 at a construction company lifting 50 pounds, doing roofing on/off for 15 years and has experience as a waitress on/off for 20 years.
- (7) Claimant has alleged a medical history of February 2008 heart attack with valve replacement and pacemaker, chronic obstructive pulmonary disease (COPD) using inhalers and breathing treatments, decreased left eye vision due to cataracts, right arm pain and numbness and bipolar disorder with current treatment.
- (8) February 2008, in part:

History: IV drug use and alcohol.. found to have endocarditis of aortic valve and possible mitral valve. Underwent open heart surgery followed by heart block.

CURRENT DIAGNOSIS: Open heart surgery for severe aortic insufficiency, Moderate mitral regurgitation, moderate tricuspid regurgitation.

NORMAL EXAMINATION AREAS: General; HEENT;
Respiratory; Abdominal, Musculoskeletal, Neuro, Mental.

FINDINGS: Cardiovascular.

CLINICAL IMPRESSION: Improving.

PHYSICAL LIMITATIONS: Lifting/carrying up to 20 pounds 1/3
of 8-hour day; use of both feet/legs for operating controls.

MENTAL LIMITATIONS: none. Medications: Coreg, baby
aspirin. [REDACTED]. Department Exhibit (DE) 1, pp. 10-
11

(9) July 2008, in part:

History: C/O cough for two days associated with chills, fever,
nasal congestion, rhinorrhea and throat irritations.

PHYSICAL EXAMINATION: Vital signs, Constitutional, Eyes,
Neck, Cardiovascular, Respiratory, Chest, Gastrointestinal,
Musculoskeletal, Neuro, Extremities: [All within normal limits.]
CT HEAD, Chest X-ray, Aortic valve replacement results
unremarkable. Diagnosis: Bronchitis. Discharge: instructed to
cease smoking. Follow with PCP in one week. Continue Coreg,
Plavix. [REDACTED] Claimant Exhibit B, pp. 1-43.

CURRENT DIAGNOSIS: S/P aortic valve (valve refluxment), S/P
endo carditis (aortic valve) S/P permanent pacemaker.

HT: 63-64", WT: 146, BP 81/60

NORMAL EXAMINATION AREAS: General; HEENT;
Respiratory; Neuro, Mental.

FINDINGS: Cardiovascular: systole at PSM, artificial aortic valve
re-do. Musculoskeletal: unable to raise right arm.

CLINICAL IMPRESSION: Stable.

PHYSICAL LIMITATIONS: Limitations expected to last 90 days.
Lifting/carrying less than 10 pounds up to 2/3 of 8-hour day; stand
and/or walk less than 2 hours in 8 hour day; use of left hand/arms
for simple grasping, reaching, pushing/pulling, fine manipulating;
use of both feet/legs for operating controls.

MENTAL LIMITATIONS: none. Needs help to dress. Limitations for right arm/shoulder with 30 degrees. Medications: Are listed. [REDACTED]. Cardiology. DE 1, pp. 4-5.

(10) September and Signed December 2008, in part:

September: Neurological Examination: The following are all normal: Vital signs, carotid arteries, peripheral vascular system, attention span and concentration, orientations times 3, language, fund of knowledge, recent and remote memory, 2nd cranial nerve, Ophthalmic exam, 3rd, 4th and 6th cranial nerves, 5th cranial nerve, 7th cranial nerve, 8th cranial nerve, 9th cranial nerve, 11th cranial nerve, 12th cranial nerve, Upper and lower extremities muscle strength, Muscle tone, Coordination, Deep tendon reflexes, Sensation and Gait and Station. [REDACTED] Claimant Exhibit B, pp. 40-43

December 2008: CURRENT DIAGNOSIS: Multiple traumas, cataracts left eye, chronic low back pain, bilateral fracture hips, COPD, bronchitis, Osteoarthritis, S/P pacemaker.

HT: 63-64", WT: 151, BP 90/40

NORMAL EXAMINATION AREAS: General; Cardiovascular, Abdominal, Neuro, Mental.

FINDINGS: HEENT: cataract left eye. Respiratory: bilateral wheezes, rhonchi and adventitious sounds.

CLINICAL IMPRESSION: Stable.

PHYSICAL LIMITATIONS: Limitations expected to last 90 days. Lifting/carrying up to 20 pounds up to 1/3 of 8-hour day; no medical need for walking device; use of both hand/arms for simple grasping, fine manipulating; use of both feet/legs for operating controls.

MENTAL LIMITATIONS: none. Can meet own needs in home. Medications: Symbicort, Albuterol inhaler, Flexoril, Tramado, Carvedilol. [REDACTED] Internal Medicine. DE 1, pp. 4-5.

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 400.10, *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).

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 CFR 416.905

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) It is the finding of the undersigned, based upon the testimony, that the Claimant had not performed SGA since 2001; was incarcerated from October 2007 until January 2008; and not eliminated at step one from a finding of disability; further review of the claim is necessary.

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 open heart surgery with repair and pacemaker implant in February 2008; a substance abuse problem with inpatient treatment; and a December 2008 Certificate of successful completion of court ordered substance abuse treatment program. Overall the medical evidence has established that Claimant has impairments that have more than a minimal effect on basic work activities; and according to the

medical records, durations has been met. There were no medical records establishing a mental impairment negative impact on basic work activities. See finding of facts 8-10.

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 impairment is a "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.

The Claimant testified to breathing problems but no medical evidence established continuous lung dysfunctions; and by testimony, the Claimant continues to smoke; and any breathing problems would be exacerbated by the Claimant's continued smoking; and not due to physical disabling lung impairment; which was not established in the medical records. See finding of facts 8-10.

The Claimant complained of some physical problems due to a MVA in 2007. But there are no medical records establishing any loss of function. There were no medical records establishing continuing problems due to heart dysfunction. All physical examinations found normal heart function. See finding of facts 8-10.

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 functional limitations according to Listing 1.00 *Musculoskeletal System* was reviewed under 1.00B: *Loss of function*.

1. *General*. Under this section, loss of function may be due to bone or joint deformity or destruction from any cause; miscellaneous disorders of the spine with or without radiculopathy or other

neurological deficits; amputation; or fractures or soft tissue injuries, including burns, requiring prolonged periods of immobility or convalescence. For inflammatory arthritides that may result in loss of function because of inflammatory peripheral joint or axial arthritis or sequelae, or because of extra-articular features, see 14.00B6. Impairments with neurological causes are to be evaluated under 11.00ff.

2. How We Define Loss of Function in These Listings

a. *General.* Regardless of the cause(s) of a musculoskeletal impairment, functional loss for purposes of these listings is defined as the inability to ambulate effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment, or the inability to perform fine and gross movements effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment. The inability to ambulate effectively or the inability to perform fine and gross movements effectively must have lasted, or be expected to last, for at least 12 months. For the purposes of these criteria, consideration of the ability to perform these activities must be from a physical standpoint alone. When there is an inability to perform these activities due to a mental impairment, the criteria in 12.00ff are to be used. We will determine whether an individual can ambulate effectively or can perform fine and gross movements effectively based on the medical and other evidence in the case record, generally without developing additional evidence about the individual's ability to perform the specific activities listed as examples in 1.00B2b(2) and 1.00B2c.

b. What We Mean by Inability to Ambulate Effectively

(1) *Definition.* Inability to ambulate effectively means an extreme limitation of the ability to walk; *i.e.*, an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. Ineffective ambulation is defined generally as having insufficient lower extremity functioning (see 1.00J) to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities. (Listing 1.05C is an exception to this general definition because the individual has the use of only one upper extremity due to amputation of a hand.)

(2) *To ambulate effectively,* individuals must be capable of sustaining a reasonable walking pace over a sufficient distance to be able to carry out activities of daily living. They must have the

ability to travel without companion assistance to and from a place of employment or school. Therefore, examples of ineffective ambulation include, but are not limited to, the inability to walk without the use of a walker, two crutches or two canes, the inability to walk a block at a reasonable pace on rough or uneven surfaces, the inability to use standard public transportation, the inability to carry out routine ambulatory activities, such as shopping and banking, and the inability to climb a few steps at a reasonable pace with the use of a single hand rail. The ability to walk independently about one's home without the use of assistive devices does not, in and of itself, constitute effective ambulation.

c. What we mean by inability to perform fine and gross movements effectively. Inability to perform fine and gross movements effectively means an extreme loss of function of both upper extremities; *i.e.*, an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. To use their upper extremities effectively, individuals must be capable of sustaining such functions as reaching, pushing, pulling, grasping, and fingering to be able to carry out activities of daily living. Therefore, examples of inability to perform fine and gross movements effectively include, but are not limited to, the inability to prepare a simple meal and feed oneself, the inability to take care of personal hygiene, the inability to sort and handle papers or files, and the inability to place files in a file cabinet at or above waist level.

In this case; and based on a lack of medical records establishing limitations with loss of function, 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 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.

Here, the medical findings were near normal for all body systems. But the doctor's opinions differed to a great extent. There were no medical records which markedly limited the physical functioning on the Claimant's ability to do work. The Claimant's past work was strenuous and in construction. The undersigned finds the Claimant cannot return to this type of past relevant 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 NW2d 829 (1987)

It is the finding of the undersigned, based upon the medical evidence, objective mental and 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-five is considered a *younger individual*; a category of individuals age 45-49. 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 201.18, for younger individual, age 45-49; education: limited or less—at least literate and able to communicate in English; previous work experience, unskilled or none; the Claimant is “not disabled” per Rule 201.18.

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 program and State Disability Assistance 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: 04/08/09

Date Mailed: 04/09/09

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:

