

[REDACTED]

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.: 2009-1686
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
December 15, 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 15, 2008. The Claimant and his mother [REDACTED] appeared at the Department of Human Service (Department) in Kent County.

The record was left open to obtain additional medical information. The medical information was submitted to the State Hearing Review Team (SHRT) and the application was denied. 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) program?

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 filed an application for MA-P on July 18, 2008.

- (2) On August 20, 2008 the Department denied the application; and on March 31, 2009 the SHRT denied the application finding the medical records indicated improvement within 12 months per 20 CFR 416.909.
- (3) On September 23, 2008 the Claimant filed a hearing request to protest the Department's determination.
- (4) Claimant's date of birth is [REDACTED], and the Claimant is forty-five years of age.
- (5) Claimant completed grade 12; one year of college; and can read and write English and perform basic math.
- (6) Claimant last worked in June 2008 as a truck driver both regional and local for sixteen years.
- (7) Claimant has alleged a medical history of good health until [REDACTED] when hospitalized for respiratory and kidney failure with diagnosis of non-insulin dependent diabetes mellitus (NIDDM) with "black outs" and burning to left shoulder/hand and a foot problem due to neuropathy and hypertension.

- (8) [REDACTED], in part:

27-day hospitalization: for change in mental status and pneumonia; and has not seen doctor for 20 years. Diagnosed with community acquired pneumonia likely Legionnaires pneumonia. Treated medically with anti-biotics, intubated for respiratory failure, needed tracheotomy, had sepsis and renal function deteriorated and had CVVH dialysis. Developed pleural effusion and underwent thoracentesis, with later chest wall infection and put on antibiotics. Was in ICU most of hospitalization and sepsis was controlled and was weaned off ventilation. Creatinine improved, off dialysis; and has acute tubular necrosis secondary to sepsis and hypotension. Kidneys are recovering, significantly deconditioned after extubation and removing tracheotomy. With physical therapy, improved slowly.

Physical strength improved significantly and now is qualified for outpatient physical therapy using bariatric 4-wheeled walker.

During hospitalization was diagnosed with diabetes and currently sub q insulin on sliding scale. Kidney function not at baseline yet. After recovering from sepsis the blood pressure started to increase and has hypertension at this point and on medication and should be continued after discharge. Follow up with PCP in one week for renal function, creatinine, diabetes mellitus type II and hypertension. Medications Metoprolol, Lantus insulin, Regular insulin sliding scale, Albuterol. [REDACTED] Department Exhibit (DE) 1, pp. 3-81.

(9) [REDACTED], in part:

[REDACTED]: F/U visit: Denies [The following] Vision change, neck pain, swallowing difficulty, teeth problems, hearing problems, chest pain, pressure and palpitations, breathing problems, abdominal pain, black tarry and bloody stools, urinating problems, hand numbness, vomiting, diarrhea, DRE, seizures, taking Niaspan for lipids, taking Lyricia.

Reports headaches, diabetes and watching blood sugars, decreased range of motion left arm, dense sensorial loss of sensation lower extremities, unable to return to work due to gait problems, weakness and numbness of lower extremities, blank outs 3-4 times a week, taking Neurotin and helpful for four hours, taking Ultracet. Height 72-73", Weight 325 pounds. Blood pressure: OK. Decreased range of motion left arm. Peripheral neuropathy, Obesity, IDDM, CPE.

Chemistry Profile: Urea Nitrogen: high. Lipid, Creatinine and blood sugar: normal. CBC: WBC high. [REDACTED]. De 1, p. 95 and 90-93.

[REDACTED]: Eye Examination: right eye: with best correction: 20/20; left eye: with best correction: 20/20. Full peripheral field. Diagnosis: myopia, astigmatism, presbyopia. Needs new glasses. [REDACTED]. DE pp. 94-97.

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. 20 CFR 416.920(b). In this case, under the first step, Claimant testified that he was not performing SGA since June 2008 but made an unsuccessful work attempt in September 2008. 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 (6thCir 1985)

In this case, the Claimant has presented sufficient medical evidence to support a finding of physical limitations. The medical evidence has established that Claimant has a physical impairment that has more than a minimal effect on basic work activities. The Claimant’s medical records do not document mental impairments that effect basic work activities

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 (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 System*. According to the medical records in [REDACTED], the Claimant had diabetes but blood sugar was under control; kidney failure had resolved; there were no reported breathing problems; and eyesight was normal with glasses. See finding of facts 8-9.

The medical records establish decreased range of motion of the left arm; and a report of "black outs" without appropriate medical testing determination of causation. CT head in [REDACTED] [REDACTED] showed no definite evidence of intracranial bleed or skull fracture. [REDACTED] prescribed an EEG but there were no medical record results. Listing 1.00, *Musculoskeletal System* requires a marked a loss of function of upper and lower extremities. The Claimant testified to the ability to sit two hours, stand for thirty minutes, and walk for thirty minutes and being able to lift twenty pounds. There were no medical records determining physical 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/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.

Here, the medical findings were essentially normal for all body systems except diabetes, left arm limits in range of motion, loss of lower extremity sensation and episodes of “black outs.” The Claimant was a truck driver for 16 years; made an unsuccessful work attempt three months after the hospitalization; and testified he cannot return to past work as a truck driver at hearing in December 2008. The undersigned accepts this testimony and does not return the Claimant to 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 physical findings, and hearing record that Claimant’s RFC for work activities on a regular and continuing basis is functionally limited to sedentary work. The Claimant has episodes of reported “black outs” but without establishing causation in the medical records or limitations due to “black outs”; and does have diabetes where low blood sugar may be a causation. But [REDACTED] wanted the Claimant to obtain an EEG; and there were no medical results of this test. Under the law there is

no option than to decide on sedentary type 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 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 201.28, for younger individual, age 45 to 49; education: high school graduate or more; previous work experience, skilled or semi-skilled—skills not transferable; the Claimant is “not disabled” per Rule 201.28.

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 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: 04/03/09

Date Mailed: 04/03/09

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

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