

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.: 2009-18617
Issue No.: 2009; 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
June 18, 2009
Wayne County DHS (49)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

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 hearing. After due notice, a hearing was conducted in Detroit, Michigan on June 18, 2009. The Claimant appeared and testified. The Claimant was represented by [REDACTED] of [REDACTED]. [REDACTED] appeared on behalf of the Department.

ISSUES

Whether the Department properly denied the Claimant's September 27, 2007 Medical Assistance ("MA-P") and State Disability Assistance ("SDA") application?

FINDINGS OF FACT

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

1. The Claimant submitted a public assistance application on September 27, 2007 seeking MA-P retroactive from June 2007 and SDA benefits. (Exhibit A)

2. The Claimant submitted an application for SSI benefits on January 31, 2008 with an eligibility onset date of May 30, 2007.
3. On April 9, 2008, the Social Security Administration (SSA”) determined the Claimant was not disabled. (Exhibit 6)
4. The Claimant failed to appeal the SSA’s determination.
5. On September 23, 2008, the Medical Review Team (“MRT”) determined the Claimant was not disabled.
6. On December 23, 2008, the Department received the Claimant’s written request for hearing.
7. On April 29, 2009, the State Hearing Review Team (“SHRT”) found the Claimant disabled effective July 2008, three months prior from the date of the Claimant’s 55th birthday. (Exhibit 3)
8. The Claimant asserts physical disabling impairment(s) due to left arm paralysis with muscle atrophy and deformity and vision impairment.
9. At the time of hearing, the Claimant was 55 years old with an [REDACTED] birth date; was 5’7” in height; and weighed approximately 155 pounds.
10. The Claimant has the equivalent of a high school degree with one year of college.
11. The Claimant’s past employment is of a general laborer.

CONCLUSIONS OF LAW

The Medical Assistance (“MA”) program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act. 42 USC 1397 and is administered by the Department of Human Services pursuant to MCL 400.10, *et. seq.* The Department of Human Services (“DHS”), formally known as the Family Independence Agency, administers the program

pursuant to MCL 400.10, *et seq* and MAC R 400.3001-3015. Departmental policies are found in the Program Administrative Manual (“PAM”), the Program Eligibility Manual (“PEM”), and the Program Reference Manual (“PRM”).

The disability standard for both disability related MA and SSI is the same. PEM 271 When the SSA determines that a client is not disabled/blind for SSI purposes, the client may appeal that determination at SSA. PEM 260 The SSA Appeals Process consists of three steps:

1. Reconsideration (if initial application filed prior to October 1, 1999)
2. Hearing
3. Appeals Council

PEM 260, p. 9 The client has 60 days from the date he receives a denial notice to appeal a SSA action. PEM 260, p. 9; PEM 271, p. 6 A SSA determination becomes final when no further appeals may be made at SSA. PEM 260, p. 2 Once a SSA’s determination that a disability or blindness does not exist becomes final, the MA case must be closed. PEM 260; PEM 271

In the record presented, the SSA made a determination that the Claimant was not eligible for SSI on April 9, 2008 with the disability onset date of May 30, 2007. The SSA decision was not appealed thus became final and binding for the period from the MA application date through the date of denial. As noted above in the Fact Findings, the Claimant was approved for MA benefits effective July 2008, thus, the only months at issue are May and June of 2008.

Disability is defined as 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(a) The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment,

prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913 An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a) Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.929(a)

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicants takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3) The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2)

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1) The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4) If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4) If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945 Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1) An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4) In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv) In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a) An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a) The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6)

As outlined above, the first step looks at the individual's current work activity. An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a)(4)(i) In the record presented, the Claimant is not involved in substantial gainful activity and last worked in 2002. Accordingly, the Claimant is not ineligible for disability under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b) An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c) Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b) 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.

Id. The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985) An impairment qualifies as non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985)

In the present case, the Claimant alleges disability due left hand paralysis with muscle atrophy and deformity and vision impairment. In support of his position, the Claimant submitted medical documentation from 2007 which, as detailed above, resulted in a final SSA determination of not disabled. On [REDACTED], the Claimant attended a department scheduled evaluation. The Claimant's eye examination was normal with 20/20 visual acuity without glasses in each eye. The left arm paralysis (injury from 1974) was noted. Motor power in the left upper extremity was 2/5 with marked flaccidity in the left upper arm, forearm, and hand documented. Deep tendon reflexes were 1+ in the left upper extremity. The examination was otherwise unremarkable. The final diagnosis was paralysis of the left arm with marked muscle atrophy in the left scapular region, left shoulder, around the shoulder region and in the left upper arm and forearm.

On [REDACTED], a Physical Residual Functional Capacity Assessment was completed by a physician on behalf of the Claimant. The Claimant's left upper extremity paralysis as a result of an injury to the left brachial plexus in a fall from 1974 was documented. The Claimant was limited to occasionally lifting/carrying 20 pounds with frequently lifting/carrying of 10 pounds. The Claimant was found able to sit, stand and/or walk about 6 hours in an 8-hour work day and was unlimited in his ability to push and/or pull with his right upper extremity. The Claimant's left hand was in a flexion contracture position with wasting of hand muscles with no reaching or gross/fine manipulation with the left arm/hand. The Claimant was able to perform activities of daily living and was independent in self-care. No visual limitations were established. Ultimately, the residual functional capacity assessment was determined to be light.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the

Claimant has presented medical evidence establishing that she does have some physical and mental limitations on her ability to perform basic work activities. The medical evidence has established that the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, 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. Listing 1.00 defines musculoskeletal system impairments. Disorders of the musculoskeletal system may result from hereditary, congenital, or acquired pathologic processes. 1.00A Impairments may result from infectious, inflammatory, or degenerative processes, traumatic or developmental events, or neoplastic, vascular, or toxic/metabolic diseases. 1.00A 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. 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. 1.00B2b(1) Ineffective ambulation is defined generally as having insufficient lower extremity function 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.) *Id.* 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. 1.00B2b(2) They must have the ability to travel without companion assistance to and from a place of employment or school. . . . *Id.* When an individual's impairment involves a lower extremity uses a hand-held assistive device, such as a cane, crutch or walker, the medical basis for use of the device should be documented. 1.00J4 The requirement to use a hand-held assistive device may also impact an individual's functional capacity by virtue of the fact that one or both upper extremities are not available for such activities as lifting, carrying, pushing, and pulling. *Id.*

In the record presented, the Claimant's left upper extremity occurred in 1974. In the record presented, there was no objective medical documentation to establish that during the two months at issue, May and June of 2008, that the Claimant's impairment met the intent and severity requirement of a listed impairment within Listing 1.00. Accordingly, the Claimant cannot be found disabled, or not disabled, under this listing.

The Claimant alleged physical disabling disability as a result of a vision impairment(s). Listing 2.00 discusses visual impairments. Visual disorders are abnormalities of the eye, the optic nerve, the optic tracts, or the brain that may cause a loss of visual acuity or visual fields. 2.00A1 A loss of visual acuity limits your ability to distinguish detail, read, do fine work, or to perceive visual stimuli in the peripheral extent of vision. *Id.* The loss of visual acuity is met when vision in the better eye after best correction is 20/200 or less. 2.02 Similarly, the loss of visual efficiency is established when the better eye of 20% or less after best correction.

In this case, the objective medical evidence does not support a finding of any visual impairment. Instead, the record documents 20/20 visual acuity in both eyes with no blurred vision. Accordingly, the Claimant cannot be found disabled under this Listing.

Ultimately, based upon the hearing record, it is found that the Claimant's medical record does not support a finding that the Claimant's physical impairment(s) are "listed impairments" or equivalent to a listed impairment discussed above. 20 CFR 416.920(a)(4)(iii) Accordingly, the Claimant's eligibility under Step 4 is considered. 20 CFR 416.905(a)

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv) An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3) Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1) Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3) RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967 Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a) 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. *Id.* Jobs are sedentary if walking and

standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b) Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c) An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d) An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e) An individual capable of very heavy work is able to perform work under all categories. *Id.*

Over the past 15 years, the Claimant worked as a general laborer which accommodated the Claimant's left arm/hand paralysis. In consideration of the Occupational Code, the Claimant's prior employment is considered unskilled, light work. The Claimant testified that he can lift/carry 20 pounds, is able to stand and/or walk short distances, and is able to sit for 30+ minutes. Ultimately, after review of the entire record, to include the Physical Residual Functional Capacity Assessment, medical records, and the Claimant's testimony, it is found that,

for the period at issue, the Claimant was able to return to past relevant employment. Accordingly, the Claimant is found not disabled for the months of May and June 2008 at Step 4.

The State Disability Assistance (“SDA”) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code (“MAC R”) 400.3151 – 400.3180. Department policies are found in PAM, PEM, and PRM. A person is considered disabled for SDA purposes 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.

In this case, the Claimant is found not disabled for purposes of Medical Assistance (“MA-P”) entitlement, therefore the Claimant’s is found not disabled for purposes of SDA benefits for the months of May and June of 2008.

Because of the SHRT determination, it is not necessary for the Administrative Law Judge to discuss the issue of disability pursuant to PAM 600 for the period from July 2008 forward. The Claimant meets the MA-P disability standard based on SHRT’s determination therefore he meets the SDA disability standard effective July 2008 provided the non-medical criteria are met. Accordingly, the Department is required to initiate a determination of the Claimant’s financial eligibility for the requested benefits, if not previously completed effective July 2008.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law meets the definition of medically disabled under the MA-P and SDA programs effective July 2008.

Accordingly, it is ORDERED:

1. The Department's determination is AFFIRMED in part.
2. The Claimant is not disabled for the period from June 2007 through April 2008 based upon the final SSA decision.
3. The Claimant is not disabled for the months of May and June 2008.
4. The Department shall initiate (if not previously completed) review of the September 2007 application to determine if all other non-medical criteria are met effective July 2008 and inform the Claimant and his authorized representative of the determination.
5. The Department shall supplement the Claimant for any lost benefits he was entitled to receive if otherwise eligible and qualified.

/s/

Colleen M. Mamelka
Administrative Law Judge
for Ishmael Ahmed, Director
Department of Human Services

Date Signed: 06/24/09

Date Mailed: 06/24/09

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 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.

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