

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: 2009-1873
Issue No: 2009, 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 7, 2009
Emmet County

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted by Administrative Law Judge Judith Ralston Ellison on January 7, 2009 pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department. Judge Ellison left State employment before the hearing decision was written. The undersigned Administrative Law Judge has written this hearing decision after review of evidence in the record including the recording of the actual hearing. At the hearing, the Claimant was present and testified. K. Longden and L. Moulder appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA") and State Disability Assistance ("SDA") programs.

FINDINGS OF FACT

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

1. Claimant filed for SDA and MA on August 8, 2008.

2. Claimant's impairments have been medically diagnosed as left lateral disk protrusion/herniation at L4-L5, left foraminal stenosis at L5-S1, coronary artery disease, generalized anxiety disorder, spinal stenosis in cervical region, moderate C6-C7, degeneration of cervical intervertebral disc.
3. Claimant's physical symptoms are pain in low back radiating into lower extremities, difficulty walking/weight bearing, difficulty sleeping,
4. Claimant testified that he takes Vicodin and Flexoril for pain relief.
5. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
6. Claimant is 5'8" tall and weighs 235 pounds.
7. Claimant is 47 years of age.
8. Claimant has a high school education.
9. Claimant is able to read, write, and perform basic math skills.
10. Claimant last worked in 2005 as an inspector of auto parts. Claimant worked at this job for 14 years before being injured on the job.
11. Claimant testified to the following physical limitations:
 - Sitting: 1 ½ hours
 - Standing: 20 minutes
 - Walking: 20-30 minutes
 - Lifting: 10 lbs.
 - Grip/grasp: right and left hand numbness
12. Claimant performs household chores such as cooking, grocery shopping, vacuuming, cleaning, and filling fire wood twice a day.
13. The Department found that Claimant was not disabled and denied Claimant's application on September 29, 2008.
14. Medical records examined are as follows, in part:
 - ██████████ Internal Medicine IME (Exhibit A)
 - ██████████ Hospital Admission (Exhibit 2, pp. 16-17)
Presentation to ER with low back pain – intolerable with attempts at weight bearing.
PHYSICAL EXAM: There is positive straight leg raising on the left.

MRI lumbar spine (Exhibit 2, pp. 9-10)

IMPRESSION:

1. Interval development of a large extruded left paracentral disk herniation which occupies the left lateral recess, producing severe central canal and mild left foraminal stenosis at L5-S1
2. Continued evidence of left lateral disk protrusion/herniation at L4-L5, causing mild left foraminal narrowing. There is evidence of enhancing epidural fibrosis surrounding the large extruded disk herniation.

CT CHEST for PE (Exhibit 2, p. 12)

Cardiac enlargement with evidence of coronary artery disease.

Hospital Admission (Exhibit 1, p. 186)

Patient admitted on 3/22/08 with ST-segment elevation, myocardial infarction, who was taken emergently to the cath lab. He was found to have a non-drug eluding stents. Patient released and returned today with mid sternal chest pressure with lightheadedness. Patient admitted to rule out myocardial infarction.

History and Physical Form (Exhibit 2, pp. 1-6)

HEAD & NECK: decreased range of motion and mildly tender

MUSCULOSKELETAL: Aches in lower lumbar area

Surgical Report (Exhibit 1, p. 175)

PROCEDURE: Selective left coronary angiography, left heart catheterization, left ventriculogram, right coronary angiography

History and Physical Form (Exhibit 2, pp. 7-8)

Patient presents for follow up of Back Pain. The pain has been occurring for years. The course has been increasing. The pain in characterized as stabbing, shooting and burning in the lumbosacral area. The pain radiates to the lateral aspect of the right leg (numbness in leg) and left thigh (pain and numbness to foot).

PAST MEDICAL HISTORY: Generalized anxiety disorder, status post cervical fusion C5-C6, status post bilateral carpal tunnel release, spinal stenosis in cervical region, moderate C6-C7 with left & right exit narrow, degeneration of cervical intervertebral disc.

History & Physical Reports, (Exhibit 1, pp. 61-78)

Spine Specialist (Exhibit 1, pp. 42-44)

OBJECTIVE: Extension is limited to just beyond the neutral position and causes discomfort around the left S1 or sacroiliac area. Side bending to the right causes pain on the left SI area. Left

Fortin finger test is positive. In the seated position his left straight leg raise is positive for low back pain only. In the supine position he has decreased lower extremity flexibility of the hamstrings, but left greater than right. The left straight leg raise causes left buttock and low back pain at approximately 30 degrees. There is a slight decrease of hip range of motion with internal rotation bilaterally. In the prone position he has pain to PA pressure of the sacroiliac joints centrally over the axial lumbar spine and paracentrally bilaterally from L4 through S1.

RECOMMENDATIONS:

3. As far as his low back goes, I would probably treat him first with lumbar facet injections under fluoroscopy. If he responds to that, I would proceed with lumbar medial branch blocks when they wear off and then to neurotomy as appropriate.
4. In regards to his neck, because of his axial pain, he would probably be a candidate for cervical epidural. If pain remains beyond that more on the sides and in the muscles he may then be a candidate for cervical facet injections and trigger point injections.
5. From a medication standpoint, he would probably benefit from long-acting medicine versus staying on Vicodin long term.
6. He would benefit from a sleep evaluation because if we can improve his sleep his pain control may improve as well.
10. Restrictions are based on his pain, presumed diagnosis of a post cervical and lumbar laminectomy syndrome. I would limit his lifting to 20 lbs. occasionally up to 10 lbs frequently using both arms, frequently from waist to chest and occasionally from floor to waist. No repetitive lifting, bending, stooping, twisting, pushing or pulling greater than 35 lbs. Allowed to sit or stand at will. No driving on one day greater than 30 miles. No walking more than 20 minutes with a break.

MRI Cervical Spine (Exhibit 1, p. 121)

1. Anterior fusion at C5-6 is stable. The central cervical canal is again narrowed throughout the cervical region secondary to congenitally short pedicles.
2. Bony degenerative changes and disk bulging again cause mild stenoses, predominantly at C3-4 through C6-7.

██████████ EMG upper extremities (Exhibit 1, p. 93)
Borderline bilateral carpal tunnel syndrome.

██████████ Neurosurgical Operative Report (Exhibit 1, p. 105)
PREOP DX: Herniated nucleus pulposus with associated lumbar spondylosis, L5-S1 bilaterally with predominantly left L5 radicular dysfunction

OPERATION: Bilateral L4-5 medial facetectomies and excision of herniated nucleus pulposus

██████████ Neurosurgical Consultation Report (Exhibit 1, p. 108-109)
His MRI shows a 5-6 disc, secondary to an injury at work. At this time since he has both signs and symptoms of myelopathy, I have recommended an anterior cervical discectomy and fusion at C5-6 with internal fixation.

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.

1. Current Substantial Gainful Activity

Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. “Substantial work activity” is work activity that involves doing significant physical or mental activities. 20 CFR 416.972(a). “Gainful work activity” is work that is usually done for pay or profit, whether or not a profit is realized. 20 CFR 416.972(b). Generally if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that she has the demonstrated ability to engage in SGA. 20 CFR 416.974 and 416.975. If an individual engages in SGA, she is not disabled regardless of how severe her physical and mental impairments are and regardless of her age, education and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step. In the subject case, the Claimant has not worked since 2005. Therefore, he is not disqualified at the first step.

2. Medically Determinable Impairment – 12 Months

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 F.2d 860, 862 (6th Cir. 1988); *Farris v Sec’y of Health & Human Servs*, 773 F.2d 85, 90 (6th Cir. 1985).

In this case, the Claimant has presented medical evidence of disc herniation producing severe central canal and mild left foraminal stenosis at L5-S1 and left lateral disc herniation at L4-5 causing mild left foraminal narrowing, and myocardial infarction. In addition, Claimant’s physician has instituted physical restrictions due to Claimant’s impairments. The medical evidence has established that Claimant has physical impairments that have more than a minimal effect on basic work activities; and Claimant’s impairments have lasted continuously for more than twelve months.

3. Listed Impairment

After reviewing the criteria of listing 1.04 *disorders of the spine*, the undersigned finds the Claimant’s medical records substantiate that the Claimant’s mental impairments meets or is

medically equivalent to the listing requirements. 20 CFR 404 § 1.04 describes Disorders of the Spine as follows:

Disorders of the Spine (e.g. herniated nucleus, pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equine) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine);

or

B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours.

or

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

In the subject case, Claimant has a herniated disc which is causing foraminal stenosis. The neural foramina, is essentially, a hole through which nerves pass through from the spinal cord to other parts of the body. Foraminal stenosis is a narrowing of that passageway. As the foramina continues to narrow, nerves are compressed and the outcome of this is pain, tingling, numbness and weakness in the muscles of the affected area. Claimant's physician, a spine specialist, found limitation of motion on extension, a neuro-anatomic distribution of pain (low back pain that radiates into the left buttocks and down the posterior aspect of the thigh to the back of the knee aggravated by bending and sitting), and positive straight leg raise both seated and supine.

Considering all of the above, the undersigned finds the Claimant's medical records substantiate that the Claimant's mental impairments meets or are medically equivalent to the listing requirements of 1.04(A). In this case, this Administrative Law Judge finds the Claimant is presently disabled at the third step for purposes of the Medical Assistance (MA) program. As claimant is disabled, there is no need to evaluate Claimant with regards to the fourth or fifth steps.

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 sufficient evidence to support a finding that Claimant's impairment has disabled her under SSI disability standards. This Administrative Law Judge finds 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 under the MA program as of August 8, 2008.

Therefore the department is ORDERED to initiate a review of the application of November August 8, 2008, if not done previously, to determine claimant's non-medical eligibility. The department shall inform the claimant of the determination in writing. The case shall be reviewed in June 2010.

/s/ _____
Jeanne M. VanderHeide
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 06/11/09

Date Mailed: 06/12/09

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 mailing 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.

JV/dj

cc:

