

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- 25858  
Issue No: 4031, 2009  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
August 5, 2009  
Oakland County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

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 filed on May 5, 2009. After due notice, a telephone hearing was held on August 5, 2009. The Claimant was present and testified. Elaine Graham, FIM 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 applied for SDA and MA as of November 25, 2008.
2. Claimant is 5'8" tall and weighs 132 pounds.
3. Claimant is right handed.

4. Claimant is 33 years of age.
5. Claimant's impairments have been medically diagnosed as sarcoidosis with swelling in testicles, feet hands and anal area along with a large rectal mass, loss of vision in right eye due to cataract, high blood pressure, adjustment disorder mixed with depression and anxiety,.
6. Claimant's physical symptoms are swelling in anal and testicle area making it difficult to sit, difficulty breathing, pain in legs, chest and groin area. Chest pains occur 2-3x/week, migraine headaches (twice a month), and difficulty sleeping.
7. Claimant's mental symptoms are difficulty with memory – forgets every day responsibilities due to pain, nervousness, low appetite, small weight loss in last year, sleep disturbances, fatigue, occasional suicidal thoughts, and problems with self esteem.
8. Claimant takes the following prescriptions (side effects):
  - a) Inhaler 2x/day
  - b) Vicodin 2-3x/day
  - c) Prednisone – 6 month stint 2-3x/day
9. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
10. Claimant has an 11<sup>th</sup> grade education. Claimant also had adult education but no GED.
11. Claimant is able to read, write and perform basic math skills.
12. Claimant last worked at [REDACTED] in 2004 as a janitor and car porter and was fired due to health problems b/c missing a lot of work. Claimant then transferred to car porting position but the condition got so bad that Claimant could not even get in and out of car. Claimant cleaned, mopped and lifting up to 50 lbs. Claimant was on his feet most of day.
13. Claimant has prior employment experience as general laborer - machine operator (25-50lbs frequently), car porter at [REDACTED] and at a car wash (20 lbs. occasionally). Majority of Claimant's jobs required standing, bending & stooping and lifting.
14. The Department denied MA and SDA on April 14, 2009.
15. Claimant testified to the following limitations:
  - Sitting: ½ hour to hour then feels it in anal area
  - Standing: ½ hour to hour
  - Walking: CI does not do currently

- Bend/stoop: Can do occasionally
- Lifting: 20 lbs.
- Grip/grasp: no problems

16. Claimant does not perform any household chores. Claimant can make his bed and clear dishes from table. Claimant does not think he could wash dishes due to standing required. Claimant does not cook except for microwave. Claimant has not been shopping in two years.
17. Medical Records reviewed are as follows, in part:

██████████ Medical Exam Report & Records (Exhibit 2, pp. 1-7)  
HX of IMPAIRMENTS: Sarcoidosis, Lg rectal mass, elevated BP, HPV lesion on scrotum  
CLINICAL IMPRESSIONS: Deteriorating  
PHYSICAL LIMITATIONS: Lifting 10 lbs frequently and 20 lbs occasionally, stand/walk less than 2 hours in 8 hour day. No pushing/pulling or fine manipulating. "Patient not able to stand for prolonged periods secondary to severe rectal Pa. Pt should not work in hazardous or dust environment for respiratory reasons." Patient needs surgery.

██████████ Psychologist IME (Exhibit 1, pp. 3-9)  
History: Patient diagnosed with Sarcoidosis (autoimmune disease) with swelling in testicles, feet, hands and anal area. Also loss of temporary vision in right eye in 2005. Ophthalmologist suggested surgery for cataracts. Migraine headaches and aches all over.  
DIAGNOSTIC IMPRESSIONS: Adjustment disorder mixed with depression and anxiety. Patient is able to socialize but he is visibly sad and embarrassed by his appearance. He is able to function as long as he is not in pain. He has been fired twice because of his health problems. Although he appears to be a good worker with good social judgment, he may have difficulty holding a job.  
GAF = 63.

██████████ - Eye Examination Report (Exhibit 1, pp. 11-15).  
DIAGNOSIS: Mature cataract, myopia. ██████████ is likely to benefit from cataract surgery on the right side. However, it would be beneficial to have an ultrasound in order to rule out a retinal detachment prior to performing surgery. Without surgery, he would be considered to function as a monocular individual and as such he should observe monocular precautions.

██████████ - ER  
SYMPTOMS: Chest Pain, heaviness & discomfort

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 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.

**1. Current Substantial Gainful Activity**

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, the Claimant last worked in 2005. 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, Claimant last worked in 2004. Therefore, the Claimant is not disqualified from receipt of disability benefits under Step 1.

## **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 F.2d 685 (6<sup>th</sup> 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 (6<sup>th</sup> Cir. 1988); *Farris v Sec’y of Health & Human Servs*, 773 F.2d 85, 90 (6<sup>th</sup> Cir. 1985).

In this case, the Claimant has presented medical evidence showing a diagnosis of sarcoidosis with swelling in testicles, hands and feet and anal area, cataracts causing blindness in one eye, high blood pressure, depression and anxiety. Claimant testified to physical limitations in terms of sitting, standing, walking and lifting. Claimant’s physicians have also placed him on physical limitations including lifting up to 20 lbs occasionally, standing/walking less than 2 hours in 8 hour day, and no pushing/pulling or fine manipulating.

The medical evidence has established that Claimant has physical and mental impairments that have more than a minimal effect on basic work activities; and Claimant’s impairments have lasted continuously for more than twelve months. It is necessary to continue to evaluate the Claimant’s impairments under step three.

**3. Listed Impairment**

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 discusses the analysis and criteria necessary to a finding of a listed impairment. The Listing 2.02 *Loss of visual acuity* was reviewed. In this case, this Administrative Law Judge finds the Claimant is not presently disabled at the third step for purposes of the Medical Assistance (MA) program because the medical evidence reviewed does not show that the physical impairments meet the intent or severity of the listings. Sequential evaluation under step four or five is necessary. 20 CFR 416.905.

#### **4. Ability to Perform Past Relevant Work**

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 one can do in a work setting. RFC is the most one can still do despite limitations. All the relevant medical and other evidence in the case record applies in the assessment.

Claimant has presented medical evidence supporting a diagnosis of sarcoidosis with swelling in testicles, hands and feet and anal area, cataracts causing blindness in one eye, high blood pressure, depression and anxiety. Claimant has been limited by his physician to lifting 10 lbs frequently and 20 lbs occasionally, standing/walking less than 2 hours in an 8 hour day, no pushing/pulling or fine manipulating and not standing for long periods of time. Claimant's prior employment included janitor, car porter, car was attendant and general laborer. All of these jobs are considered unskilled and light to medium in exertional level. Given the medical restrictions above, the undersigned finds the Claimant currently limited to sedentary work. Claimant is,

therefore, unable to return to past relevant work in any of the above listing prior occupations. Evaluation under step five will be made according to the law.

### **5. Ability to Perform Other 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 N.W.2d 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 at the level of sedentary work. Sedentary work is described as follows:

*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.

20 CFR 416.967(a). Claimant's most recent doctor recommended physical limitation dictates that Claimant is limited to lifting less than 20 lbs occasionally throughout the day. However, Claimant is also extremely limited in his standing/walking. Therefore, Claimant would be limited to sedentary work. 20 CFR 416.967.

Claimant at forty-six is considered a *younger individual*; a category of individuals in age group 18-44. 20 CFR 404, Appendix 2 to Subpart P, Rule 201.20. Claimant's education is "limited or less – at least literate and able to communicate in English" and his previous work experience is unskilled. While generally, such an individual would be able to make a transition into sedentary work, there are exceptions:

Inability to engage in substantial gainful activity would be indicated where an individual who is restricted to sedentary work because of a severe medically determinable impairment lacks special skills or experience relevant to sedentary work, lacks educational qualifications relevant to most sedentary work (e.g., has a limited education or less) and the individual's age, though not necessarily advanced, is a factor which significantly limits vocational adaptability.

20 CFR 404, Appendix 2 to Subpart P, Rule 201.00(c). In the present case, Claimant has only an 11<sup>th</sup> grade education. Claimant also has mental as well as physical limitations which would make his transition to sedentary unskilled work more difficult. Claimant would be unable to work in a sitting job working with small parts because he has limitations with pushing, pulling and fine manipulating. Furthermore, Claimant currently has monocular vision until he can obtain cataract surgery and is limited to avoiding work in hazardous or dist environments due to respiratory reasons. In fact, Claimant attempted to work and was unable to maintain the jobs due to his health problems.

This Administrative Law Judge finds that the Claimant's impairments and limitations have a major effect upon Claimant's ability to perform basic work activities. Claimant is unable to perform even the full range of activities for sedentary work as defined in 20 CFR 416.967(a) because of the nature of the limitations. The total impact caused by the combination of medical problems suffered by the Claimant must be considered. The combination of Claimant's impairments results in a severe impairment which limits Claimant's ability to work. 20 CFR

404.1529. Therefore, it is the finding of the undersigned, based upon the medical data and hearing record that Claimant is “disabled” at the fifth step.

Finally, The Department has failed to provide vocational evidence which establishes that Claimant has the residual function capacity for substantial gainful activity and that, given Claimant’s age, education and work experience, there are significant numbers of jobs in the national economy which the Claimant could perform despite Claimant’s limitations. Accordingly, the Administrative Law Judge concludes that Claimant is disabled for the purposes of the MA program.

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.

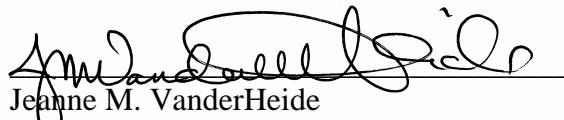
In this case, there is sufficient evidence to support a finding that Claimant’s impairment is disabling him under SSI disability standards. This Administrative Law Judge finds the Claimant is “disabled” for purposes of the MA program.

DECISION AND ORDER

The Administrative Law Judge, based on the findings of fact and conclusions of law, decides that the Claimant is “disabled” for purposes of the Medical Assistance program and the State Disability Program.

It is ORDERED; the Department’s determination in this matter is REVERSED.

Accordingly, The Department is ORDERED to initiate a review of the November 25, 2008 application to determine if all other non-medical eligibility criteria are met. The Department shall inform Claimant of its determination in writing. Assuming Claimant is otherwise eligible for program benefits, the Department shall review Claimant’s continued eligibility for program benefits in December, 2010.

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

Date Signed: 12/10/09

Date Mailed: 12/11/09

**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

2009-25858/JV

cc:

