

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. 2009-2840

Issue No. 2009

Case No:

Load No.

Hearing Date:

December 10, 2008

Macomb 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 10, 2008. The Claimant and his representative [REDACTED] appeared at the Department of Human Services (Department) in Macomb County.

ISSUE

Whether the Department properly determined the Claimant is "not disabled" for purposes of Medical Assistance based on disability (MA-P) program and retroactive MA-P for the month of March 2008?

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 April 10, 2008 the Claimant applied for MA-P, and retroactive MA-P.

(2) On July 8, 2008 the Department denied the application; and on November 5, 2008 the SHRT denied the application finding the medical records failed to established duration per 20 CFR 416.920(c) because of vascular surgery in March 2008 and an expectation of improvement.

(3) On October 3, 2008 the Claimant filed a timely hearing request to protest the Department's determination.

(4) Claimant's date of birth is [REDACTED] and the Claimant is fifty-five years of age.

(5) Claimant completed grade 12; and can read and write English and perform basic math skills.

(6) Claimant last worked full-time in 2004 as a coil handler/hi-lo driver and machine operator; and failed a three week ten hour a day work attempt in September 2008.

(7) Claimant has alleged a medical history of March 2008 vascular surgery, stent placement in 2003 for coronary artery disease (CAD), shortness of breath from chronic lung disease, 2005 right leg bypass surgery with right leg/foot numbness, tingling, burning treated with resting; and depression without treatment.

(8) 2005 and 2006, in part:

2005: BILATERAL LOWER EXTREMITY ARTERIAL DOPPLER: Conclusion: study demonstrates superficial femoral artery occlusive disease and suspicion of infrapopliteal arterial bilaterally.

BILATERAL CAROTID DUPLEX SCAN: conclusion: demonstrates mild stenosis in right and left internal carotid arteries with 0-39% stenosis. Mild stenosis in right/left external carotid arteries. Subclavian arteries are patent. Department Exhibit (DE) 1, pp. 106-111

MYOCARDIAL PERFUSION IMAGING STUDY: Study was abnormal. EF of 42%. DE 1, pp. 120 127.

2006: AORTIC RUNOFF: Impression: Bilateral superficial femoral artery occlusion. No other significant findings. [REDACTED]

Pre-operative MRI right shoulder: Advanced degenerative changes involving acromioclavicular joint with impression on adjacent muscle with full thickness tear of tendon with fluid. [REDACTED]

X-ray chest; mild diffuse interstitial opacity with chronic changes versus mild edema. Heart size is normal. No acute pneumonia. [REDACTED]

POST OPERATIVE DIAGNOSES: right shoulder rotator cuff repair with impingement syndrome and AC joint arthrosis. Condition satisfactory. [REDACTED] DE 1, pp. 112-119.

(9) March 2008, in part:

Discharge Summary: ER admission for gangrene and ischemic rest pain in right foot. History of bypass graft and stent but did not follow up with vascular surgeon because money was owed. Taken to operating room with negative stress test. But bypass graft was performed to re-vascularize the right leg.

Post operatively he did well and ankle brachial index was increased to 0.84 and there were bilateral femoral pulses. Initial post operative arterial examination of bilateral lower extremities: Results **Right** ankle/brachial index is 0.84, unobtainable toe/brachial index. **Left** ankle/brachial index is 0.58 with a 0.22 toe/brachial index. CONCLUSION: Moderate femoral and infrapopliteal arterial occlusive disease of the bilateral lower extremities with right digital ischemia, by Doppler waveforms and segmental pressures. [REDACTED] Discharged to home to follow with vascular surgeon. [REDACTED] DE 1, p.10-11 and 12-97.

(10) April 2008, in part:

HISTORY: angio occlusion right common iliac, right femoral, left femoral, April 2008 aortofemoral bypass graft, right arm endarterectomy with extended profundoplasty /patch angioplasty. CURRENT DIAGNOSIS: In April 2008: AO-iliac and femoral artery occlusion, gangrene. Femoral –popliteal graft occlusion. Vital signs: Height 5'5", Weight 186, BP 110/70. NORMAL FINDINGS: General, Mental.

TESTING: PO: peripheral arterial testing: right ABI 0.84/left ABI 0.56.

CLINICAL IMPRESSION: Improving. Return to work approximately six weeks post operative. [June 2008]

PHYSICAL LIMITATIONS: No Lifting/carrying. No assistive devices are medically required; use of both hands/arms for simple grasping, reaching, pushing/pulling, fine manipulating; use of both feet/legs for operating foot controls. No Mental limitations [REDACTED]

[REDACTED] DE 1, pp. 8-9

### 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 (SGA). 20 CFR 416.920(b). In this case, under the first step, the Claimant testified to a September 2008 failed work attempt. But full-time work as machine operator/hi-lo driver ceased in 2004. The undersigned decides the 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 (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 F2d 860, 862 (6<sup>th</sup> 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 to support a finding that Claimant has more than slight abnormalities that are physical limitations on his abilities to perform basic work activities. See Finding of Facts 8-10. There was no medical evidence of a mental impairment that would affect performance of 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 physical impairments are 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 physical impairments 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. Listing 4.12 *Peripheral arterial disease* was reviewed. In this matter, the medical records establish a diagnosis of lower extremity occlusions with surgical interventions. The criteria require a resting ankle/brachial systolic blood pressure ratio of less than 0.50; or resting toe/brachial blood pressure of less than 0.40. The test providing the results of the ABI for ankle/brachial both right/left extremities did not meet the listing. Toe/brachial ABI were not measured by the test on the right but on the left were 0.22 [REDACTED] two days post operative. There were no further test results of these indexes from April to the time of

hearing in December 2008 to measure the current severity of lower extremity peripheral artery disease. See Finding of Facts 9-10.

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 physical impairment does not meet the intent or severity of the listings. 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 Claimant 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. See 20 CFR 416.945.

Claimant's past relevant work included strenuous type work. At hearing the Claimant testified to sitting 3-4 hours, standing 15 minutes, walking 5-10 minutes and lifting 25 pounds. The Claimant testified to shortness of breath but is also overweight at 5'5" and 184 pounds.

There were no current physical restrictions from [REDACTED] In April 2008, [REDACTED] opined a return to work in six weeks post op; or June 2008. The Claimant failed in a work attempt for three weeks in September 2008. This is persuasive the Claimant cannot return to past relevant work. The undersigned decides the duration of the Claimant's impairment: lower extremity peripheral vascular disease is met through medical records establishing the impairment in February 2006. See DE 1, P.112-113. Evaluation under step five is necessary.

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 functional capacity," defined simply as "what can you still do despite you 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 limitations.

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.

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 fifty-five is considered *advanced age*; a category of individuals age 55 and over. 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 201.06, for individuals of *advanced age*, over 55; education: high school graduate or more—does not provide for direct entry into skilled work; previous work

experience, skilled or semi-skilled—skills not transferable; the Claimant is “disabled” per Rule 201.06.

It is the finding of the undersigned, based upon the medical data and hearing record that Claimant is “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 “disabled” for purposes of the Medical Assistance program, and retroactive Medical Assistance programs.

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

Accordingly, The Department is ORDERED to initiate a review of the March 2008 application to determine if all other non-medical eligibility criteria are met. The Department shall inform Claimant and his representative 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 February 2010.

/s/  
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Judith Ralston Ellison  
Administrative Law Judge  
For Ishmael Ahmed, Director  
Department of Human Services

Date Signed: February 26, 2009

Date Mailed: March 2, 2009

**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

cc:

