

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: 2009-33425
Issue No: 2009, 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 21, 2009
Oakland County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted by telephone hearing on October 21, 2009 pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department on March 2, 2009. At the hearing, the Claimant was present and testified. Judy Fineman, FIM and Bernice Wagg, FIS, 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 October 28, 2008. Claimant applied for retroactive benefits to July, 2008.
2. Claimant is 5' 11" tall and weighs 210 pounds.
3. Claimant is right handed.

4. Claimant is 53 years of age.
5. Claimant's impairments have been medically diagnosed as sleep apnea, narcolepsy, cataplexy (serotonin released in an awake state) and restless leg syndrome.
6. Claimant's physical symptoms are fatigue, complete and total muscle loss, (Claimant states that he falls down like a wet noodle, 2-3x/week), muscle tremors (if sitting in a chair – chin will fall to his chest and he will drool). Claimant is aware of surroundings, but unable to react. Claimant can feel it coming on and has 5-10 seconds to react and sit down), movement of legs while sleeping. Claimant will fall asleep 2-3x/day.
7. Claimant takes the following prescriptions (side effects):
 - a) Provigil
 - b) Sinemet/cardiopia – restless leg syndrome
 - c) CPAP machine – face mask (sometimes keeps him awake)
8. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
9. Claimant has an 11th grade education as well as a GED in 1980 from [REDACTED] Schools. In addition, Claimant has recently taken some college classes.
10. Claimant is able to read/write/perform basic math skills.
11. Claimant last worked October, 2000 as a trailer mechanic. The physical activity of the job involved lifting up to 100 lbs. (brake drum for semi trailer), being on his feet a lot during day, along with bending and stooping. Claimant testified that he was fired for falling asleep on job.
12. Claimant has prior employment experience as truck driver (for 28 years) – quit 12 years ago b/c of cataplexic seizure. Previous duties include bending, lifting – 50 lbs, and squatting. Claimant testified that the more physical he is, the faster it wears him out. Claimant also stated that he cannot stay awake an 8 hour day.
13. Claimant testified that he has no physical limitations other than falling asleep.
14. Claimant performs household chores such as cooking, cleaning, grocery shopping (together b/c of inability to drive), cleaning (dust, vacuum, cleans bathrooms), laundry, mowing the lawn and vacuuming the pool.
15. The Department denied Claimant's request for benefits on 2/19/09.
16. The Department received Claimant's request for a hearing on 3/2/09.

17. The following medical records were reviewed, in part, as follows:

██████████ – Nocturnal Polysomnogram–CPAP Titration Study (Exhibit 5, p. 3)

Sleep efficiency of 81.0% which is normal. The sleep staging, revealed in percentages of stage awake with 19.0% and in stage 1 with 5.4%. Stage 2 sleep percentages were at 60.5% and stage 3-4 sleep was at 6.7%. The percentages of REM sleep were 10% which is markedly reduced. The sleep histogram revealed a quick sleep onset with good sleep progression. Sleep was fragmented.

PLAN: Based on the above information pt has moderate obstructive sleep apnea that is well controlled with nasal-CPAP a 9 cm water pressure. The patient has a history of narcolepsy and he has been on stimulants. He requires maintenance of wakefulness testing to proof vigilance to obtain his truck driver license.

██████████ – maintenance of wakefulness Testing (Exhibit 5, p. 4)

Patient has been taking Provigil 200 mg PO BID. Despite, he continues to have severe disorder of vigilance. He may need Ritalin. I have discussed the test results with the patient. He does not drive and is not involved in work that requires vigilance. He wishes to follow up with me in 2-3 months.

██████████ – Medical Exam Report from Pulmonary Specialist (Exhibit 1, pp. 5-6)

DX: Obstructive sleep apnea, narcolepsy with cataplexy, periodic limb movement disorder/restless syndrome

PHYSICAL LIMITATIONS: None

MENTAL LIMITATIONS: None

Current Medications: Provigil, Sinemet, Simostatin

██████████ Internal Medicine Medical Exam Report (Exhibit 2)

COMPLAINTS: Drowsiness, daytime sleepiness

DX: Obstructive Sleep apnea, narcolepsy, restless leg syndrome.

PHYSICAL LIMITATIONS: Lifting 10 lbs frequently, No pushing/pulling w arms, no operating foot/leg controls.

MENTAL LIMITATIONS: Sustained concentration limited

██████████ Nocturnal Polysomnogram Nasal-CPAP Titration Study (Exhibit 3)

42 arousals during sleep study night

1. CI has moderate obstructive sleep apnea that is well controlled with nasal-CPAP at 9.0 cm water pressure. Patient used large full mask in the laboratory. Patient may choose the interface of his or her choice at time of set up.

2. Patient period limb movements persists therefore he would need higher dose of Sinemet
3. He may need full montage EEG and neurological evaluation

██████ Multiple Sleep Latency Testing (Exhibit 5, p. 5)

Pt is consistent with excessive daytime sleepiness and cataplexy. These findings are consistent with narcolepsy. Patient cataplexy episode are rare.

██████ Nocturnal Polysomnogram (Exhibit 4)

91 arousals. Sleep was highly fragmented. 52 respirator related arousals noted

- DX:
- 1) Obstructive sleep apnea syndrome . . . 780.53 (mild)
 - 2) Significant hemoglobin desaturation nadir to 89.6%
 - 3) Periodic limb movement disorder (severe)
 - 4) Need CPAP
 - 5) Bruxism

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 Bridges/Program Administrative Manual (BAM/PAM), the Bridges/Program Eligibility Manual (BEM/PEM) and the Reference Tables (RFT).

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

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). 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 this case, under the first step, the Claimant last worked in October of 2000. 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 (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 from medical providers showing sleep apnea, narcolepsy, and restless leg syndrome. 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. 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 Listings 3.10 *Sleep-related breathing disorders* and 12.02 *Organic mental disorders* were 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 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. In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has

the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e). A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

Claimant has been placed on physical limitations by his internist of lifting up to 10 lbs frequently, no pushing/pulling with the arms and no operating foot/leg controls. Furthermore, Claimant's sustained concentration was found to be limited. Claimant's daytime sleepiness accounts for his lack of sustained concentration. However, the medical evidence provided by the internal medicine physician does not support the physical limitations. The "Multiple Sleep Latency Testing" interpretation on [REDACTED] noted that Claimant's cataplexy episodes are rare. Furthermore, Claimant testified that he had no physical limitations other than falling asleep and that he was able to do all household chores, including cooking, cleaning, grocery shopping, laundry, mowing the lawn and vacuuming the pool. Based on Claimant's testimony and an evaluation of the medical evidence, the Administrative Law Judge finds that Claimant is able to perform work at a light to medium exertional level, providing it does not involve driving, operating heavy machinery, or working around unprotected heights.

Claimant's prior employment as an uncertified trailer mechanic, based on his testimony of his job duties, would have been considered semiskilled and heavy in exertional level as it required significant lifting and standing. Claimant's prior employment as a truck driver, based

on his testimony of job duties, would have been considered unskilled and medium in exertional level. Based on the information above, the undersigned finds the Claimant unable to return to past relevant work as a truck driver as Claimant's severe vigilance disorder would prevent him from driving. 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 at the limits of light to medium exertional level based on Claimant's testimony of his functional activities. 20 CFR 416.967.

Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines 20 CFR 416.967(a) describes light work:

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the 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. To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If

someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

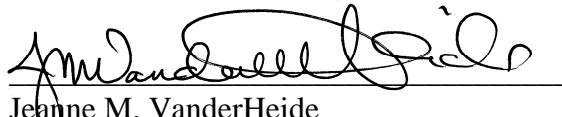
Claimant at fifty-three years is considered an *individual approaching advanced age*; a category of individuals in age group (50-54) who may be significantly limited in vocational adaptability if restricted to sedentary work. Considering Claimant's age and educational background of high school graduate or more with a history of semi-skilled work, skills not transferrable, according to the applicable table, Claimant is not disabled if there are jobs that can be performed. 20 CFR 404, Subpart P, Appendix 2, Rule 202.14. In fact, "the lack of relevant work experience would have little significance since the bulk of unskilled jobs require no qualifying work experience. The capability for light work which includes the ability to do sedentary work, represents the capability for substantial number of such jobs." 20 CFR 404, Subpart P, Appendix 2, Rule 202.00(g).

The undersigned finds, based on Claimant's testimony, that he is able to perform a wide variety of jobs at the sedentary, light and medium exertional level. This is supported by the activities that Claimant is already performing in his own household such as vacuuming, dusting, cleaning bathrooms, vacuuming the pool, mowing the lawn, cooking and grocery shopping. If Claimant is capable of doing these things in his own home, there is no reason that Claimant could not perform the same activities in an employment setting. Furthermore, while Claimant has problems with sustained concentration, Claimant was still able to complete college classes and testified that he was going to take additional classes this winter. The Administrative Law Judge finds that there are a significant number of jobs in the economy that can be performed by Claimant despite his limitations. Accordingly, there is insufficient evidence in this case to support a finding that Claimant's impairment has disabled him under SSI disability standards.

This Administrative Law Judge finds the Claimant is “not 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, finds that the Department was correct in determining that the claimant was not disabled for the purposes of the MA / SDA program and IT IS ORDERED that the Department’s decision in this matter is AFFIRMED.



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

Date Signed: 03/10/10

Date Mailed: 03/15/10

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:

