

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: 20096935

Issue No: 4031

Case No:

Load No:

Hearing Date:

April 2, 2009

Washtenaw 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 November 5, 2008. After due notice, a telephone hearing was held on April 2, 2009. The Claimant was present and testified. [REDACTED] also testified on behalf of Claimant. Carol Domasny, ME Specialist appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA") program.

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 on 7/9/08.
2. Claimant is 6' 1" tall and weighs 250 pounds.
3. Claimant is 46 years of age.

4. Claimant's impairments have been medically diagnosed as degenerative disc disease, severe left L4-L5 foraminal stenosis, disk protrusion L3-4 and L2-3 with neural encroachment bilaterally and high blood pressure.
5. Claimant's physical symptoms are low back pain and shortness of breath.
6. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
7. Claimant has completed the 11th grade in High School. He later obtained a G.E.D.
8. Claimant is able to read, write, and perform basic math skills.
9. Claimant last worked in approximately 2005 as a quality control inspector for a swimming pool liner factory.
10. Claimant has prior employment experience as a general laborer with heavy lifting and basic construction.
11. Claimant testified that he has the following physical limitations:
 - Sitting : 15-20 minutes
 - Standing: 1/2/ hour
 - Walking: ¼ mile
 - Lifting: 20 lbs.
12. Claimant performs household chores such as washing dishes, cooking occasionally, picking up his area, and watering the garden.
13. Claimant has been prescribed a cane for walking.
14. The Department found that Claimant was not disabled and denied Claimant's application on 10/22/2008.
15. Medical records examined are as follows:
 - ██████████, 2/4/09, Medical Exam Report, in part
 - HX: 48 y/o man with history of degenerative joint disease and persistent lower back pain radiating to the left leg and worsening with standing up and exercise.
 - DX: Degenerative disk disease. Left L4-5 foraminal stenosis. Lumbar radiculopathy.
 - MRI: Disk end plate degenerative changes on the lower lumbosacral spine, especially at L4-L5 where a central and left lateral focal disk protrusion causes severe left neural foraminal stenosis on the impinging left L5 nerve root.

PHYSICAL LIMITATIONS:

Lifting – Less than 10 Lbs frequently
Stand/walk – less than 2 hrs in 8 hr day

[REDACTED], 2/3/09, [REDACTED]
[REDACTED], in part

MRI and Plain x-ray films show degenerative disk disease and collapse at L4-5 with significant disk protrusion post toward the left.

[REDACTED], 1/23/09, [REDACTED], in part,
(Exhibit 3)

COMPLAINTS: Pain in back and down legs. He states he has been fairly incapacitated in terms of his ability to carry out daily activities such as riding buses, getting to and from points A to point B etc. He takes hydrocodone to try to control the pain. He rates it as a 9/10 presently.

PHYSICAL EXAM: Straight leg raise is negative. The patient has difficulty with range of motion of his back, particularly with straight and hyperextension

IMPRESSION: Chronic history of degenerative disk disease with likely advancing disk protrusion involving L3-L4 and to a lesser extent L2-L3 with neural encroachment bilaterally, left worse than right

PLAN: The severity of the stenosis is fairly impressive, and likely, the patient will continue to have chronic pain unless something is done to address the L3-L4 if not also the L2-L3 interval with an interbody fusion together with posterior fusion and instrumentation. Patient fully understands that he would have to stop smoking prior to the surgery.

MRI L-Spine, 12/2/08

Disc-end-plant degenerative changes in the lower lumbosacral spine especially at L4-L5 where a central and left lateral focal disc protrusion causes severe left neural foraminal stenosis exiting on the impinging L5 nerve root.

[REDACTED], 9/25/08, Medical Exam Report, in part (Exhibit 1, pp. 8-9)

CURRENT DX: Low Back pain, Hepatitis C, Bipolar

MUSCULOSKELETAL EXAM: paraspinal muscle spasm, decreased ROM secondary to pain, decreased flexion, straight leg test negative

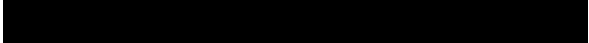
MENTAL EXAM: Agitated mood, normal ability to follow directions

PHYSICAL LIMITATIONS:

Lifting – 10 lbs 2/3 of 8 hrs day, 25 lbs, occasionally

Stand/walk – at least 2 hrs in 8 hr day

Sit – less than 6 hrs (due to psychiatric)

, 8/26/08, (Exhibit 2)
Rx for cane (walking) due to degenerative disc disease and back pain

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. 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 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 showing a diagnosis of degenerative disc disease, severe left L4-L5 foraminal stenosis, disk protrusion L3-4 and L2-3 with neural encroachment bilaterally. Claimant testified to physical limitations in terms of sitting, standing, walking and lifting. Claimant’s physicians have also placed him on physical limitations.

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 1.04 *Disorders of the Spine* 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 degenerative disc disease, left lateral focal disk protrusion and foraminal stenosis. Claimant's prior employment included general laborer, factory work, and basic construction. These jobs are all considered unskilled and require a medium to heavy exertional level. Claimant has been placed on lift/stand/walk physical limitations by two doctors. 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 10 lbs throughout the day and standing/walking less than two (2) hours per eight hour day. 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 45-49 when age is a lesser advantage factor for making adjustment to other work. 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 a limited work history involving heavy labor. Any specialized training Claimant received was also a heavy labor trade. Claimant's basic education

is through the 11th grade. This Administrative Law Judge finds that Claimant is not likely to transfer into a sedentary office job given his age and education. Therefore, it is the finding of the undersigned, based upon the medical data and hearing record that Claimant is “disabled” at the fifth step.

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 7/9/09 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 April 2010.

/s/

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

Date Signed: 04/21/09

Date Mailed: 04/22/09

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:

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