

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.: 2010-2724
Issue No.: 2009/4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
December 14, 2009
Oakland County DHS (2)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a hearing was conducted from Madison Heights, Michigan on Monday, December 14, 2009. The Claimant appeared and testified. The Claimant was represented by [REDACTED] of [REDACTED]. [REDACTED] appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of the Medical Assistance ("MA-P") benefit 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. The Claimant submitted a public assistance application seeking MA-P benefits on May 26, 2009.

2. On June 18, 2009, the Medical Review Team (“MRT”) determined the Claimant was not disabled.
3. On June 24, 2009, the Department sent an eligibility notice to the Claimant informing him that he was found not disabled.
4. On September 2, 2009, the Department received the Claimant’s timely written request for hearing.
5. On October 27, 2009, the State Hearing Review Team found the Claimant not disabled and capable of performing past work. (Exhibit 5)
6. The Claimant’s alleged physical disabling impairments are due to chronic hip pain, arthritis, feet swelling, left eye blindness, pancreatitis, diabetes, hypertension, GERD, and sleep apnea.
7. At the time of the hearing, the Claimant was 53 years old with a [REDACTED] birth date.
8. The Claimant’s past employment includes work as a computer technician, comic book distribution, customer service, receiving clerk, at a bank processing checks, and part-time summer employment selling tickets for a festival.

CONCLUSIONS OF LAW

The Medical Assistance (“MA”) program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services (“DHS”), formally known as the Family Independence Agency, pursuant to MCL 400.10 *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”).

Disability is defined as 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(a) The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913 An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a) Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3) The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2)

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1) The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of

the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4) If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4) If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945 Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1) An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4) In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv) In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a) An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a) The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6)

As outlined above, the first step looks at the individual's current work activity. An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a)(4)(i) In the record presented, the Claimant testified that he would be able to perform most of the requirements, if not all, of his past employment with the exception of employment as a computer technician, customer service, and receiving clerk. At this point, the Claimant is not involved in substantial gainful activity therefore the Claimant is not ineligible for disability under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b) An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c) Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b) 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.

Id. The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985) An impairment qualifies as non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985)

In the present case, the Claimant alleges physical disability due to chronic hip pain, arthritis, feet swelling, left eye blindness, pancreatitis, diabetes, hypertension, GERD, and sleep apnea.

On [REDACTED], the Claimant was admitted to the hospital with complaints of nausea with vomiting and was found in a hyperosmolar hyperglycemic state. The Claimant was discharged on [REDACTED] [REDACTED] with the discharge diagnoses of hyperosmolar hyperglycemic state/diabetes mellitus type 2, acute renal failure, and anaphylaxis to amoxicillin, hypertension, and upper GI bleed.

On [REDACTED], the Claimant attended a follow-up appointment regarding his recent diabetes diagnoses (see above). The Claimant's blood sugar was fairly well controlled and there were no active signs or symptoms of pancreatitis.

On [REDACTED], an upper endoscopy was performed on the Claimant which revealed mild to moderate chronic pancreatitis without significant ductal changes.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were listed as left eye blindness, hypertension, diabetes, left hip arthritis, and sleep apnea. The physical examination was normal except for the left eye

blindness. The Claimant was in stable condition but was able to occasionally lift/carry less than 10 pounds with standing and/or waking at less than 2 hours during an 8 hour workday. An assistive device for ambulation was not medically required and the Claimant was able to perform repetitive actions with his upper extremities. The physician opined that the Claimant was unable to work.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were listed as blindness of the left eye, hypertension, arthritis of the left hip, sleep apnea, Hyper Osmolar, Non-Ketotic (“HONK”), and acute pancreatitis. The physical examination was normal noting the Claimant’s left eye blindness. The Claimant’s condition was improving but he was restricted to lifting/carrying less than 10 pounds; standing and/or walking less than 2 hours in an 8-hour workday; and able to perform repetitive actions with his upper extremities.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented some medical evidence establishing that he does have some physical limitations on his ability to perform basic work activities. The medical evidence has established that the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant’s basic work activities. Further, the impairments have lasted, or are expected to last, continuously for twelve months; therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant’s impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Claimant has alleged physical disabling impairments due

to chronic hip pain, arthritis, feet swelling, left eye blindness, pancreatitis, diabetes, hypertension, GERD, and sleep apnea. Listing 1.00 (musculoskeletal impairments), Listing 2.00 (special senses and speech), Listing 3.00 (respiratory system), Listing 4.00 (cardiovascular impairments), Listing 5.00 (digestive disorders), and 14.00 (adult immune disorders) were considered in light of the objective medical records. Ultimately, the Claimant's medical record does not support a finding that the Claimant's physical impairment(s) are "listed impairments" or equivalent to a listed impairment detailed above. 20 CFR 416.920(a)(4)(iii) Accordingly, the Claimant's eligibility under Step 4 is considered. 20 CFR 416.905(a)

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv) An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3) Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1) Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3) RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967 Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a) 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. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b) Even though 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. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c) An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d) An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e) An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands (exertional requirements, i.e. sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional. 20 CFR 416.969a(a) In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity with the demands of past relevant work. *Id.* If an individual can no longer

do past relevant work the same residual functional capacity assessment along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty function due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e. can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi) If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2) The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

The Claimant's prior work history consists of employment work as a computer technician, comic book distribution, customer service, receiving clerk, at a bank processing checks, and part-time summer employment selling tickets for a festival. As a computer technician, the Claimant was required to lift/carry up to 50 pounds; set up and maintain networks, with some minor computer repair. The Claimant testified that he would be unable to completely perform this position due to the amount of lifting and walking. The Claimant's position as a check processor required him to stand on his feet most of the day with lifting/carrying of approximately 20 pounds. The Claimant testified that he could probably do this job currently. The employment in a comic distribution center was mainly in a supervisory

capacity where the Claimant sat most of the day but had to lift approximately 10 – 15 pounds. The Claimant testified that he could perform the duties necessary to perform this position on a full-time basis. The Claimant's work in customer services and in receiving (same company) required him to lift/carry up to 25 pounds and he was mainly on his feet. The Claimant testified that he would be unable to perform this job due to the weight and standing/walking requirements. Finally, the Claimant's part-time summer employment involved both sitting and standing (about 50% each), collecting money, completed reports, and supervising other workers. The Claimant believed he would be able to do this job but had reservations regarding the standing and/or walking requirements. The Claimant testified that he can lift/carry approximately 25 – 30 pounds; can sit for over 2 hours at a time; can walk short distances; can stand for approximately 40 minutes; can bend and climb stairs, but has difficulty squatting. The Claimant has no problems manipulating with his upper extremities, and is able to meet the demands of daily living. The medical documentation limitations are more restrictive limited the Claimant to around the 10 pound mark with standing and/or walking at less than 2 hours during an 8 hour workday. If the impairment or combination of impairments does not limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist.

20 CFR 416.920 In consideration of the Claimant's testimony, medical records, and current limitations, it is found that the Claimant is able to return to past relevant semi-skilled, sedentary employment. Further, the Claimant testified to being able to perform past employment provided there was the opportunity. Accordingly, the Claimant is found not disabled at Step 4 with no further analysis required.

The State Disability Assistance ("SDA") program, which provides financial assistance for disabled persons, was established by 2004 PA 344. DHS administers the SDA program

purusant to MCL 400.10 *et seq.* and Michigan Administrative Code (“MAC R”) 400.3151 – 400.3180. Department policies are found in PAM, PEM, and PRM. A person is considered disabled for SDA purposes if the person has a physical or mental impariment 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.

In this case, the Claimant is found not disabled for purposes of the Medical Assistance (“MA-P”) program therefore the Claimant’s is found not disabled for purposes of SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the findings of fact and conclusions of law, finds the Claimant not disabled for purposes of the Medical Assistance program and the State Disability Assistance program.

It is ORDERED:

The Department’s determination is AFFIRMED.

Colleen M. Mamelka

Colleen M. Mamelka
Administrative Law Judge
For Ishmael Ahmed, Director
Department of Human Services

Date Signed: 1/12/2010


Date Mailed: 1/12/2010

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 the Circuit 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.

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