

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg No: 2010-29897
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 12, 2010
Macomb County DHS

ADMINISTRATIVE LAW JUDGE: Jonathan Owens

HEARING DECISION

This matter was conducted by hearing on May 12, 2010 pursuant to MCL 400.9 and MCL 400.37 by in person hearing upon the Claimant's request for hearing received by the Department on April 13, 2010. At the hearing, the Claimant was present and testified. [REDACTED] was present and represented Claimant. Cheryl Howell 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 MA on November 5, 2009. Claimant requested MA retroactive to October 2009.
2. Claimant's impairments have been medically diagnosed as acute hypertension with urgency and hospitalizations, atherosclerotic heart disease, dislipidemia and heart catheterizations.
3. Claimant's symptoms are passing out, daily light headedness and dizziness, shortness of breath, pain in both legs, limitations in bending over without pain, right middle finger was cut off and reattached (3 years ago), right handed – Claimant cannot grip with right hand as a result, left hand grip ok, chest pains every other day, some memory issues, disrupted sleep and golf ball sized bulge on both legs.

4. Claimant testified that his physician has recommended additional surgery.
5. Claimant testified that he takes nitroglycerin twice a day per his doctor's order and takes more than the two for severe chest pain 60% of the time.
6. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
7. Claimant is 6' tall and weighs 235 pounds.
8. Claimant is 51 years of age.
9. Claimant has a high school grade education. Claimant's writing is limited due to right hand finger reattachment.
10. Claimant last worked in 2007 as a welder for 1 ½ years. Claimant also worked as a steel worker for 14 years.
11. Claimant testified to the following limitations:
 - a. walking – 30 feet
 - b. sitting – 5-10 minutes
 - c. standing 5-10 minutes
12. Claimant performs limited household chores with help although he is able to manage his self care.
13. Claimant testified that he elevates his feet and legs at least nine hours during the day and still experiences problems with swelling. Claimant also uses ice and heat to assist with the pain and swelling.
14. The Department found that Claimant was not disabled and denied Claimant's application on 4/5/10.
15. Claimant filed a hearing request on April 13, 2010.
16. Medical records examined are as follows, in part:

██████████ Hospital Admission (Exhibit 3)

COMPLAINTS: blurred vision & being light headed.

DX: 1) acute hypertension urgency; 2) uncontrolled hypertension; 3) atherosclerotic heart disease; 4) Active tobacco use; 5) dislipidemia

██████████ Hospital Admission (Exhibit A)

Hx of bare metal stent placement to his LAD and left circumflex coronary in distant past and angioplasty earlier this fall in the LAD. Admitted for hypertension.

DX: hypertensive urgency/accelerated hypertension, atherosclerotic cardiovascular heart disease with prior percutaneous intervention.

██████████ Cardiologist office note (Exhibit C1)

Hx of atherosclerotic coronary vascular disease. He just underwent catheterization for recurrent chest pain. He states that he is getting lower extremity edema and pain in his legs. He has been compliant with his medications.

██████████ Surgical Report (Exhibit C2)

Left heart catheterization, selective coronary angiography, left ventriculogram.

██████████ Cardiologist office note (Exhibit C10)

Pain in legs with walking and cramps at rest.

IMPRESSIONS: 1) status post percutaneous intervention of the left anterior descending artery secondary to in-stent restenosis; 2) Atherosclerotic coronary vascular disease; 4) hypertension not well controlled.

██████████ Surgical Report (Exhibit C13)

PROCEDURES:

1. Left heart catheterization
2. Selective coronary angiogram
3. Left ventriculogram
4. Aortic root injection
5. Percutaneous transluminal coronary angioplasty of the left anterior descending coronary artery

██████████ Hospital Admission (Exhibit C16)

Pt was admitted to the hospital with two syncopal episodes and then post syncopal episode he had chest discomfort like an elephant sitting on his chest. Underwent balloon angioplasty secondary to in-stent restenosis

██████████ Echocardiogram (Exhibit C26)

Left ventricular ejection fraction is 50%

██████████ Carotid Doppler study (Exhibit C29)

IMPRESSION: Abnormal carotid Doppler suggesting 1-39% stenosis bilaterally

██████████ Internal Medicine Examination Report (Exhibit E1-2)

HX: Pt with uncontrolled hypertension and has had multiple hospital admission

DX: HTN urgency with encephalopathy, angina

CARDIOVASCULAR EXAM: +1 lower extremity edema

MUSCULOSKELETAL: limited range of motion secondary to pain

MENTAL: Flat affect
CLINICAL IMPRESSIONS: Deteriorating
PHYSICAL IMPAIRMENTS: Lifting less than 10 lbs occasionally,
stand/walk less than 2 hours in 8 hour day. No reaching, pulling or
pushing.

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 Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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 2007. 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 diagnoses of atherosclerotic coronary vascular disease, uncontrolled hypertension with urgency and multiple hospital admissions resulting in heart catheterizations. Claimant is also under physical restrictions placed on him by his physician. Therefore, 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 20 CFR Part 40, Subpart P, Appendix 1 (20 CFR 416.920(d), 416.925 and 416.926). 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 4.02 *Chronic heart failure* 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 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.

Claimant testified to physical limitations of not being able to walk, stand or sit for very long. In addition, Claimant indicated that he has swelling in his lower extremities and will spend about nine hours a day with his legs elevated. The lower extremity edema was supported in the cardiologist notes. In addition, Claimant has daily episodes of light headedness and dizziness. Claimant's primary care physician has also placed Claimant on physical restrictions of lifting 10 lbs. occasionally and walking/standing no more than two hours in an eight hour day plus no reaching, pushing or pulling. As a result, the Administrative Law Judge finds that Claimant is limited to sedentary work based on his testimony and doctor imposed restrictions.

Claimant's prior employment of welder and steel worker, based on his testimony of his job duties would have been considered semi-skilled to skilled and heavy in exertional level. Based on this information the undersigned finds the Claimant unable to return to past relevant work in any of the above mentioned 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 at the limit of sedentary. 20 CFR 416.967. Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines 20 CFR 416.967(a) describes sedentary work:

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.

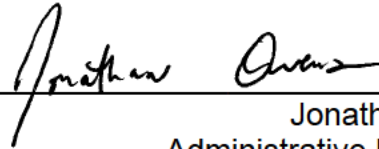
Claimant at fifty-three years is considered an *individual approaching advanced age*; a category of individuals in age group (50-54) who may be significantly limited in vocational adaptability if restricted to sedentary work. 20 CFR 404, Subpart P, Appendix 2, Rule 201.00(g). Considering Claimant's medical limitations, this Administrative Law Judge finds that Claimant's impairments render him capable of doing only sedentary work. Given Claimant's age, education, and prior work experience of semi skilled to skilled work with skills that are nontransferable, Claimant is disabled by law for the purposes of the programs. 20 CFR 404, Subpart P, Appendix 2, Table 1, Rule 201.14.

In this case, there is sufficient evidence to support a finding that Claimant's impairment has disabled her 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 upon the above findings of fact and conclusions of law, decides that the Claimant is medically disabled under the MA program as of October 2009, inclusive of retroactive benefits to July 2008.

Therefore, the Department is ordered to initiate a review of the application of November 5, 2009, if not done previously, to determine Claimant's non-medical eligibility. The Department shall inform the Claimant of the determination in writing. The case shall be reviewed July 2011.



Jonathan Owens
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 07/28/10

Date Mailed: 07/28/10

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.

JWO/dj

cc:

