

STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

██████████

Claimant

Reg. No.: 201019836

Issue No.: 2009

Case No.:

Load No.:

Hearing Date:

March 22, 2010

Oakland County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted by an in-person hearing on March 22, 2010 pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department. At the hearing, the Claimant was present and testified. ██████████ of ██████████ was present and represented Claimant. ██████████, ES, 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 September, 3, 2009, and Claimant requested MA retroactive to August 2009.
2. Claimant is 5' 11" tall and weighs 170 pounds.
3. Claimant is left handed.

4. Claimant is 56 years of age.
5. Claimant's impairments have been medically diagnosed as degenerative disc disease with foraminal narrowing, arthritis in ankle, depression, Hepatitis C and biliary sludge.
6. Claimant's physical symptoms are pain in low back (constant aching pain), ankle pain, pounding pain in chest, shortness of breath (sometimes every week, sometimes once a month), constantly weak, and sleep disturbances (4 hours per night, because of anxiety wakes during the night).
7. Claimant's mental symptoms are short term memory problems, poor concentration, anxiety attacks (all nerved up and starts to stutter, last 20 minutes or hours), crying spells, nervousness, poor appetite (can only eat a small amount of time, sleep disturbances, weight loss/gain (up & down 10-20 lbs), fatigue (always), suicidal thoughts, low self esteem.
8. Claimant takes the following prescriptions:
  - a. Vicodin – 1x/week (tries to avoid b/c of history of drugs)
  - b. Docusate NA – constipation
  - c. Metroprolol Tartrate – blood pressure
  - d. Omeprazole – every day for stomach (heartburn)
  - e. Was prescribed Valium for anxiety but Claimant does not like them.
9. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
10. Claimant has a high school diploma. Claimant also attended a year in college in Germany.
11. Claimant is able to read, write and perform basic math.
12. Claimant last worked in the late 1990s for a year at a paving company as a maintenance engineer (repairing equipment, fabricating, welding). Claimant's job duties required that Claimant stand on his feet all day long bending/stooping and lifting up to 50 lbs. Claimant left this job because the bending and lifting bothered his back and legs (pain in back of legs and calves b/c of heart condition).
13. Claimant has prior employment experience doing electrical, plumbing, construction, and automobile work (side jobs). All of these jobs require lifting up to 25-30 lbs. Claimant worked for himself as some days he was unable to work at all.
14. Claimant testified to the following physical limitations:
  - Sit: hours if back is in good position

- Stand: Can stand longer than he can sit
- Walk: Can walk an hour at a time
- bend/stoop: Can do it with pain
- lift: Cl does not pick up anything over 25 lbs.
- grip/grasp: no problems

15. Claimant performs household chores such as cleaning, moving furniture on sliders, cleaning the yard out, and house maintenance. Claimant also cooks and loads the dishwasher, grocery shops, takes the trash out, mows grass (1/2 hour with power mower, sometimes bothers back). A neighbor shovels the snow. Claimant is unable to get on his knees and clean.

16. The Department found that Claimant was not disabled and denied Claimant's application on November 10, 2009.

17. Medical records examined are as follows:

3/24/10 Radiology exam of ribs, bilateral (Exhibit B, p. 2)

Reason for test: abdominal and right lower rib pain

IMPRESSION: nonspecific nonobstructive bowel gas pattern. Calcification in the left lower pelvis likely pelvic phlebolith.

3/16/10 Myocardial perfusion imaging with Spect (Exhibit B, p. 3)

IMPRESSION: There is no evidence of a defect to suggest ischemia or infarction

3/16/10 Ejection Fraction Test (Exhibit B, p. 5)

The left ventricle is normal in size and function with ejection fractions of 55% at rest and 64% at stress. The test was clinically and electrocardiographically negative for ischemia.

12/3/09 MRI Lumbar Spine w/o contrast (Exhibit B, p. 8)

IMPRESSION: 1) There is mild degree of degenerative change with slight left foraminal narrowing associated with degenerative changes of facet joints at L4-L5. 2) At L5-S1 level, there is moderate degree of broad-based disc bulging with bilateral foraminal narrowing and degenerative changes of facet joints. No spinal stenosis or disc herniation is noted. 3) Incidental note is made of bilateral renal cysts. Also noted is suggestion of sludge or small calculi within the gallbladder.

8/19/09 Abdominal ultrasound (Exhibit A3)

Abnormal echogenicity within the gallbladder has a masslike configuration but no internal perfusion. This may represent a large amount of dense sludge within the gallbladder.

8/19/09 ECG (Exhibit A4)

Abnormal

8/26/09 Medical Exam Report (Exhibit 1, pp. 4-5)

HX: CLBP, Abdominal pain, substance abuse, Hep C, depression

DX: Abdominal pain secondary to biliary sludge

RESPIRATORY: Decreased breath sounds

ABDOMINAL: tender in the right upper quadrant with

X-RAY: Back, degenerative disc disease

IMPRESSION: Pt needs surgery

PHYSICAL LIMITATIONS: Lifting 10 lbs occasionally, stand/walk 2 hrs in 8 hr work day, sit less than 6 hours in 8 hours

8/26/09 Pain Consultation (Exhibit 1, p. 14)

Dxed with alcoholic pancreatic although he denies significant alcohol use. Now diagnosed with gallstone pancreatitis. Complaining of pain in upper right quadrant. History of heroin use. Off methadone for several months.

8/19/09 Hepatitis C Virus (Exhibit 1, p. 26)

4/21/09 Complete Spine (Exhibit B, p. 9)

Two views of L spine demonstrate that the vertebrae are of normal height and are in normal alignment. There is slight narrowing of posterior aspect of intervertebral disc spaces. This may be due to degenerative disc disease. Sclerosis of facet transplant with L4-L5 and S1 with encroachment of intervertebral foramina is seen.

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 is not currently working. 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 (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 F.2d 860, 862 (6<sup>th</sup> Cir. 1988); *Farris v Sec’y of Health & Human Servs*, 773 F.2d 85, 90 (6<sup>th</sup> Cir. 1985).

In this case, the Claimant has presented medical evidence from medical providers showing diagnoses of degenerative disc disease with foraminal narrowing, depression, Hepatitis

C and biliary sludge. Claimant is also under physical restrictions placed 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 Listing 1.02 *Major dysfunction of the joints* 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.

No symptom or combination of symptoms can be the basis for a finding of disability, no matter how genuine the individual's complaints may appear to be, unless there are medical signs and laboratory findings demonstrating the existence of a medically determinable physical or mental impairment(se) that could reasonably be expected to produce the symptoms. In determining the credibility of the individual's statements, the adjudicator must consider the entire case record, including the objective medical evidence, the individual's own statements about symptoms, statements and other information provided by treating or examining physicians. SSR 96-7P.

Claimant testified to physical limitations of sitting for several hours, standing for even longer and not picking up anything over 25 lbs. Claimant's physician placed Claimant on even more limited physical restrictions of lifting 10 lbs occasionally, stand/walk 2 hours per 8 hour day and sit 2 hours per 8 hour day based on the x-ray of Claimant's spine and degenerative disc disease of the ankle. However, the undersigned does not find that the medical records support the doctor imposed limitations.

The 12/3/09 MRI of the lumbar spine revealed a moderate degree of broad-based disc bulging with bilateral foraminal narrowing and degenerative changes of facet joints. Yet, no spinal stenosis or disc herniation was noted. Nor did Claimant complain of any radicular symptoms which might have stemmed from the bilateral foraminal narrowing. Furthermore, Claimant testified that while he has good days and bad days, he is able to do many physical activities such as bike riding for 10 minutes to an hour, mowing the lawn, taking the trash out

and going grocery shopping. As a result, this Administrative Law Judge does not find that the evidence supports the doctor's physical restrictions. Claimant's testimony reveals that Claimant is able to stand more than 2 hours in an 8 hour day and lift up to 25 pounds occasionally. As a result, Claimant would be limited to work that is light in exertion.

Claimant's prior employment, based on his testimony of job duties would have been considered semi-skilled and medium in exertional level as it required lifting 25-50 lbs. frequently and walking/standing a significant portion of the day. 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 light exertional range as light work requires prolonged periods of time spent walking or standing. 20 CFR 416.967.

Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines 20 CFR 416.967, 202.00(b) describes light work:

*Light work:* The functional capacity to perform a wide or full range of light work represents substantial work capability compatible with making a work adjustment of substantial numbers of unskilled jobs and, thus, generally provides sufficient occupational mobility even for severely impaired individuals who are not of advanced age and have sufficient education competences for unskilled work.

Claimant at fifty-six years is considered an *individual approaching advanced age*; a category of individuals in age group (55 and over).

For individuals of advanced age who can no longer perform vocationally relevant past work and who have a history of unskilled work experience, or who can no longer perform vocationally relevant past work and who have only skills that are not readily transferable to a significant range of semi-skilled or skilled work that is within the individual's functional capacity, the limitations in vocational adaptability represented by functional restriction to light work warrant a finding of disabled.

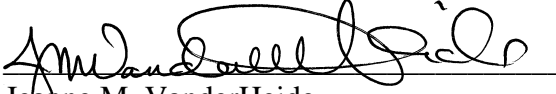
20 CFR 404, Subpart P, Appendix 2, Rule 202.00(c). Considering Claimant's medical limitations, this Administrative Law Judge finds that claimant's impairments render him capable of doing only light work. Given Claimant's advanced age (56), education (more than high school), and prior work experience of semiskilled (with specialized and non-transferrable work skills), Claimant is disabled by law for the purposes of the programs. 20 CFR 404, Subpart P, Appendix 2, Table 1, Rule 202.06.

In this case, there is sufficient evidence to support a finding that Claimant's impairment has disabled 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 upon the above findings of fact and conclusions of law, decides that the claimant is medically disabled under the MA program as of 9/3/09, inclusive of retroactive benefits to August 2009.

Therefore the department is ordered to initiate a review of the application of September 3, 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 May, 2011.

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

Date Signed: June 29, 2010

Date Mailed: June 29, 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 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/hw

cc:

