

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.: 20104541
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
December 16, 2009
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted by telephone hearing from Detroit, Michigan on December 16, 2009 pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department on September 9, 2009. At the hearing, the Claimant was present and testified. [REDACTED], MCW, 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") 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 applied for SDA and MA as of 5/14/09.
2. Claimant is 5'8" tall and weighs 150 pounds.
3. Claimant is right handed.

4. Claimant is 56 years of age.
5. Claimant's impairments have been medically diagnosed as cystitis, and incontinence.
6. Claimant's physical symptoms are pain in low back and left jaw, vision on left side decreased which affects reading, shortness of breath.
7. Claimant's mental symptoms are anxiety attacks (sometimes), crying spells (every other day), low appetite, depression, weight loss (5-10 lbs w/in a few months), sleep disturbances (3-4 hours/night, keeps waking), and hallucinations (Aunt talking to him).
8. Claimant takes the following prescriptions:
 - a) Motrin 800 – every 8 hours
 - b) Citromloxacin HCl 500 mg – cleans blood
9. Claimant has a 1 ½ years of college education.
10. Claimant is able to read, write, and perform basic math skills.
11. Claimant last worked as custodian for [REDACTED]. Claimant retired on 5/1/09. Claimant retired early due to his physical health. The job duties included lifting, moving tables and chairs, cleaned entire building every summer and required lifting 50 gallon buckets and 50-100 lb bags of rock salt.
12. Claimant has prior employment experience as printer's assistant, which required lifting up to 25 lbs., standing, bending/stooping.
13. Claimant testified to the following physical limitations:
 - Sitting: 15-20 minutes before has to stand or lie down
 - Standing: 45 min to an hour
 - Walking: 1 block
 - Bend/stoop: bending is difficult b/c of back pain
 - Lifting: Can lift a gallon of milk.
 - Grip/grasp: no problems
14. Claimant performs household chores such as washing dishes, laundry, making sandwiches, cleaning his room, dusting, vacuuming, and waters the flowers. Claimant's nephew mows the grass, shovels the snow, and takes out the trash. Claimant and nephew shop for food together.
15. Claimant testified that he has used cane since 2000 and that he put the cane down to do his job.

16. The Department found that Claimant was not disabled and denied Claimant's application on 9/18/09.
17. The record was left open to allow Claimant to submit a DHS 49 from his infectious disease doctor and his treating physician. No additional medical information was provided.
18. Medical records examined are as follows, in part:

10/22/09 Internal Medicine IME (Exhibit 2)

HX: Pt had gunshot wound in 1998 over the jaw. He was admitted to [REDACTED] and has surgery six times on the mandible for repair of the broken jaw. Now sometimes he has pain in the jaw. He also claims that he has hearing impairment in the left ear. The claimant also claimed that he has lower back pain, which is aching in character with an intensity of 7/10. He denied any radiation, tingling or numbness, sensory or motor loss, urinary or bowel incontinence.

BONES & JOINTS: Straight leg raising is negative to 90 degrees bilaterally. The patient is able to squat and arise from squatting position.

DX:

- 1) Pain in the left side of the jaw, status post surgery in 1998, no active tenderness, redness or swelling. There is no impairment of the movement of the jaw.
- 2) Hearing impairment of the left ear. He can hear and understand normal conversation
- 3) Lower back pain. No bony, musculoskeletal or neurological abnormalities noted.

MEDICAL SOURCE STATEMENT: Based on today's examination, the patient should be able to work 8 hours a day. There is no limitation in walking, carrying, pushing or pulling. Hand grip strength is normal and equal in both hands. There is no limitation in climbing stairs, ropes, ladders or scaffolding. No limitation of hearing, vision or speech. No mental impairment noted.

3/23/09 Urology Medical Exam Report (Exhibit 2, p. 10-11)

DX: Cystitis, incontinence

No physical or mental limitations

3/23/09 Urology Appt (Exhibit 1, p. 32)

Complaints of urgency and frequency starting 3/13/09 at ER visit. He felt better after getting some antibiotics. They did a scan which showed no problem.

DX: UTI

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 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 was not currently working at the time of the hearing. 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 from medical providers showing diagnoses of cystitis, incontinence and pain in his jaw and back. Claimant also testified to physical limitations in terms of sitting, standing, walking and lifting. Claimant testified that he has been diagnosed with HIV, but there is currently no medical documentation of same so it is not considered in this decision.

The medical evidence has established that Claimant has testified to physical limitations that could have more than a minimal effect on basic work activities; and Claimant’s impairments have lasted continuously or will last for more than twelve months. Because this is a de minimus test, 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. 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 general, the claimant has the responsibility to prove that he/she is disabled. Claimant's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only claimant's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the claimant has an impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

Claimant provided very limited medical records. There are no medical records to support Claimant's diagnosis of HIV. Nor did Claimant provide any support that he is physically or

mentally limited other than his testimony. In fact, the only medical documentation that can be relied upon is the internal medicine IME which determined that Claimant would be able to work eight hours per day with no limitations in walking, carrying, pushing or pulling and an urology IME which did not place Claimant on any physical or mental limitations. The Administrative Law Judge does not find an objective medical evidence that Claimant is as impaired as he testified.

Claimant's prior employment as a custodian and as a printer's assistant, based on Claimant's testimony of his job duties, would be considered unskilled and medium in exertional level as both required lifting and standing. Based on the Internal Medicine IME, there is nothing limiting Claimant from returning to either of these positions.

As Claimant's impairments do not prevent him from performing past relevant work, Claimant is not considered disabled under the fourth step per the applicable table. 20 CFR 404, Subpart P, Appendix 2, Rule 203.14. Accordingly, it is the finding of the undersigned, based upon the medical data and hearing record that Claimant is "not disabled" at the fourth 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 BEM/PEM 261.

In this case, there is insufficient evidence 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 and SDA program and IT IS ORDERED that the Department's decision in this matter is affirmed.

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

Date Signed: June 16, 2010

Date Mailed: June 16, 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.

AM/htw

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