

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.: 2007-14982  
Issue No.: 2009  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date:  
July 18, 2007  
Wayne County DHS (17)

ADMINISTRATIVE LAW JUDGE: Judith Ralston Ellison

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. After due notice, a hearing was held on July 17, 2007. The Claimant and a translator appeared at the Department of Human Service (Department) in Wayne County.

The record was left open to obtain additional medical information. An Interim Order was issued for new medical information but none was received. The record closed. This matter is now before the undersigned for final decision.

ISSUE

Whether the Department properly determined the Claimant is "not disabled" for purposes of Medical Assistance based on disability (MA-P) program?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) The Claimant filed an application for MA-P and was reviewed by Michigan Review Team and denied.
- (2) On February 15, 2007 the Department denied the application; and on June 15, 2007 the SHRT denied the application because medical records did not establish a mental/physical impairment that prevented basic work activities.
- (3) On March 8, 2007 the Claimant filed a timely hearing request to protest the Department's determination.
- (4) Claimant's date of birth is [REDACTED], and the Claimant is forty years of age.
- (5) Claimant completed grade 7.
- (6) Claimant has no US work history; and arrived in the US from Iraq in 1997.
- (7) Claimant has a medical history of loss of right eye vision and decreased left eye vision and history of right arm weakness after surgery and schizoaffective disorder.
- (8) February 2005, in part:

First meeting and he was not very cooperative, appears manipulative and has a negative attitude and came for medications to be prescribed and he doesn't want them changed. Reports irritation leading to agitation and aggression with physical violence when he would break objects. Prescribed Zyprexa, Neurotin, Artane and Restoril and takes with Tylenol 3 and Restoril and Nyquil to calm self down. Denies substance abuse history.

Living alone after immigrating to US 7-8 years ago, never worked and survived on SSI [Stopped due to SSA termination N13 due to expiration of seven-year eligibility [REDACTED] [REDACTED]]  
OBSERVATION: Average build and stature casually dressed and sits comfortable in chair. No outward thought disturbance noted, denies auditory and visual hallucinations. Thought content depressive without suicidal/homicidal ideas. Alert and orientated with fair attention and concentration. Insight and judgment were limited with fair impulse control. Currently appears to be low risk in dangerousness to others and he agrees to call 911. Showed willingness to follow recommendations including Seroquel with

Lexpro. Continue individual; psychotherapy. [REDACTED], MD.  
Psychiatrist. Department Exhibit (DE) pp. 11-13

(9) September 2006, in part:

PSYCHIATRIC EVALUATION: Diagnosis: Axis I: Bipolar disorder, depressed type, post traumatic stress disorder. Axis II: R/O borderline personality disorder. Not able to manage benefits funds.

Came alone for appointment and poor historian. Artificial right eye. Taking psychotic medication since 1997. Taking Seroquel, Zyprexa and Artane with limited improvement. Says episodic mood swings, does not get along with others and has flashbacks and nightmares relative to Iraq experiences. Past medical records indicate some drug seeking behavior for Artane. OBSERVATIONS: Neighbor dropped him off but says does not get along with people. HT 67", WT: 160. Fair hygiene and grooming and on time for appointment. Tendency to exaggerate symptoms and appeared manipulative.

In general was unable to respond to questions on information, abstract thinking, similarities, and judgment. But was orientated times 3 and difficulty with memory. Wants to return to Iraq to family [REDACTED], MD. Psychiatrist. DE 1, pp. 4-7.

#### 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.

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity (SGA). 20 CFR 416.920(b). In this case, under the first step, Claimant testified to no performance of SGA. Thus, the Claimant is not disqualified for MA at step one in the evaluation process.

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 (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 F2d 860, 862 (6<sup>th</sup> Cir. 1988); *Farris v Sec’y of Health & Human Servs*, 773 F2d 85, 90 (6thCir 1985).

In this case, the Claimant has presented medical evidence of mental impairments. The medical evidence has established that Claimant has a mental impairment that has more than a minimal effect on basic work activities. The Claimant’s medical records did not document any physical impairments supported by appropriate medical testing or clinical examination.

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 (Listing) discusses the analysis and criteria necessary to a finding of a listed impairment. The undersigned’s decision was based on Listing 12.00C *Mental Impairments, Measure of Severity*

We measure severity according to the functional limitations imposed by your medically determinable mental impairment(s). We assess functional limitations using the activities of daily

living; social functioning; concentration, persistence, or pace; and episodes of de-compensation. Where we use "marked" as a standard for measuring the degree of limitation, it means more than moderate but less than extreme. A marked limitation may arise when several activities or functions are impaired, or even when only one is impaired, as long as the degree of limitation is such as to interfere seriously with your ability to function independently, appropriately, effectively, and on a sustained basis.

In reviewing the medical records the undersigned finds the Claimant's mental impairment does not meet the level of severity required by the listings. Professional evaluators noted normal orientation, fair hygiene and grooming, timely appearance at the appointments. The Claimant's responses were regarded as manipulative by the evaluators; and the undersigned finds the Claimant inconsistent with facts; and has an understanding of English more than he discloses. See finding of facts 8-9.

This Administrative Law Judge finds the Claimant is not presently disabled at the third step for purposes of the Medical Assistance (MA) program. Sequential evaluation under step four or five is necessary. 20 CFR 416.905.

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.

Here, the medical records were related to mental impairments. But the Claimant was considered manipulative; and there were no medical records after [REDACTED]. But there was no work history. The undersigned finds the Claimant can return to past work on this basis.

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 NW2d 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 limited to sedentary work. Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines 20 CFR 416.967(a):

*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 forty is considered a *younger individual*; a category of individuals age 18 to 44. Under Appendix 2 to Subpart P: Table No. 1—Residual Functional Capacity: Maximum Sustained Work Capability Limited to Sedentary Work as a Result of Severe Medically Determinable Impairment(s), Rule 201.24, for younger individual, age 18 to 44; education:

limited or less—at least able to communicate in English [The Claimant’s inability to speak English was not sufficiently proved with evidence of writing English in the record]; previous work experience, unskilled or none; the Claimant is “not disabled” per Rule 201.24.

It is the finding of the undersigned, based upon the medical data and hearing record that Claimant is “not disabled” at the fifth step.

DECISION AND ORDER

The Administrative Law Judge, based on the findings of fact and conclusions of law, decides that the Claimant is “not disabled” for purposes of the Medical Assistance based on disability program.

It is ORDERED; the Department’s determination in this matter is AFFIRMED.

/s/  
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Judith Ralston Ellison  
Administrative Law Judge  
For Ishmael Ahmed, Director  
Department of Human Services

Date Signed: 05/13/09

Date Mailed: 05/13/09

**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 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.

JRE/jlg



cc:

