

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. 2007-17538

Issue No. 2009; 4031

Case No:

Load No.

Hearing Date:

October 24, 2007

Wayne County DHS

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, the Claimant and [REDACTED] appeared at a hearing held on October 24, 2007 at the Department of Human Services (Department) in Wayne County, District 49.

The closing date was waived. Additional medical records and consultative examinations were order by Interim Order. No new medical records were received and the record closed. The matter is now before the undersigned for final decision.

ISSUES

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

FINDINGS OF FACT

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

- (1) On October 31, 2006 the Claimant applied for MA-P and SDA.
- (2) On March 21, 2007 the Department denied the application; and on October 2, 2007 the SHRT guided by Vocational Rule 203.19 denied the application because medical records support the ability to perform a wide range of medium, unskilled work avoiding heights and dangerous machinery.
- (3) On April 2, 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 fifty-four years of age.
- (5) Claimant completed grade 7 and alleges difficulties with reading and writing English and performing basic math.
- (6) Claimant last worked in [REDACTED] as a security guard at the development center and as a janitor but needing constant supervision.
- (7) Claimant has a medical history of decreased concentration, confusion; and right shoulder pain, hypertension, diabetes and seizures.
- (8) [REDACTED] in part:

ER DIAGNOSES: Acute stroke, right upper extremity weakness, hypertension.

HISTORY: Presented to ER states he fell to the ground and not sure if had a seizure. Is insulin dependent diabetic mellitus (IDDM) and states takes insulin with blood sugar of 50; and had

elevated blood pressure 202/106. C/O inability to raise right arm due to weakness. Positive for tobacco and alcohol use but no alcohol detected. PHYSICAL EXAMINATION: [Within normal limits.] except 3/5 strength in right upper extremity. Chest x-ray, CT head, CT abdomen and thorax, EKG were negative. Except right upper lung lobe infiltrates.

FINAL DIAGNOSES: Mental Status Changes and seizures.

Maintained on Dilantin and was seizure free in hospital and mental status improved. MRI brain showed mild cerebellar atrophy. EEG showed moderate to severe degree of generalized slowing for diffuse encephalopathy process. Psychiatry recommended nursing home place due to cognitive changes but patient did not want this and patient is not candidate for psychotherapy medication due to threshold seizure decreased. Blood pressure was controlled with Vasotec. Started on insulin. Shoulder x-ray showed fracture of scapula with surgical repair unnecessary but use of sling. For alcoholism started on vitamins and Ativan. Live functions tests for hepatitis C were within normal limits. Discharged in stable condition to follow with home health care. Is not close with family. Medications: Aspirin, Enalapril, Tylenol, Insulin, Metformin, Dilantin, Folic Acid, Thiamine and daily multivitamin. Leaves with arm in sling and instructions on diabetic diet. See [REDACTED] one week and [REDACTED] two weeks. [REDACTED]. Department Exhibit (DE) 1, pp. 9-19.

(9) [REDACTED], in part:

PSYCHIATRIC/PSYHOLOGICAL EXAMINATION:

Poor eye contact and unclear and guarded. Poor historian. Currently lives alone and has long history of mental illness and multiple hospitalizations. Sees psychiatrist monthly and taking medications but misses his scheduled doses. Depressed mood, paranoid thoughts, auditory hallucinations and insomnia. Admits to occasional alcohol use. Poor judgment and non-compliant with diabetes treatment. Frequently runs out of medications. Exhibits little ability to make long range plans even for his basic needs.

DIAGNOSIS: Axis I: Schizoaffective disorder, Depressed type.

[REDACTED].

(10) [REDACTED], in part:

MENTAL RESIDUAL FUNCTIONAL CAPACITY:

Moderately to markedly impaired in understanding and memory. Moderately to markedly impaired in sustained concentration and

persistence. Moderately to markedly impaired in social interaction.
Markedly impaired in adaptation. [REDACTED]. De 1, pp. 24-37

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 SGA. 20 CFR 416.920(b). In this case, under the first step, Claimant testified to not engaging in SGA since [REDACTED]. Therefore, the Claimant is not disqualified from 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 (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 F2d 860, 862 (6th Cir. 1988); *Farris v Sec'y of Health & Human Servs*, 773 F2d 85, 90 (6thCir 1985).

In this case, the Claimant has presented sufficient medical evidence to support a finding that Claimant has some mental limitations since childhood. The Claimant also has been diagnosed with hypertension and IDDM which do not receive adequate treatment likely due to the Claimant's mental disabilities. The medical evidence has established that Claimant has mental/physical impairments that have more than a minimal effect on basic work activities. The Claimant's impairments have lasted continually for 12 months. See Finding of Facts 8-9.

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 impairments are a "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 12.00 *Mental Disorders*. The medical records are not adequate after [REDACTED] to determine whether hypertension and IDDM limit the Claimant's abilities to perform basic work activities.

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 records do not establish the severity or marked difficulties needed to meet a listing level impairment.

The Claimant is ambulatory and there were no physical restrictions of either upper or lower extremities. Listing 12.03: *Schizophrenic, Paranoid and Other Psychotic Disorders* was reviewed and evaluated against the medical records. The examining doctor opined the Claimant was able to manage his own benefit funds; and the Claimant is able to travel independently by bus but his care manager, in attendance at the hearing, testified to confusion and inability to work without supervision due to forgetfulness. Even though the mental status records report symptoms associated with Listing 12.03, the lack of recent medical records prevents a finding of meeting the intent and severity. 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 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.

Past relevant recent work was janitorial type. Now physically the undersigned finds the Claimant could return to physical work. There are no medical records documenting inability to return to work. But based on the medical records and hearing testimony the undersigned finds the Claimant cannot manage his own self-care of hypertension or IDDM and the Claimant's care manager testified the Claimant cannot follow through on work without close supervision. Thus the undersigned finds the Claimant has a chronic mental impairment, unlikely to go away and probably will last his lifetime that prevents working independent at past work or any other work.

The Claimant is “disabled” at the fourth step; and the undersigned decides the medical records provide evidence that the Claimant cannot independently manage his benefit funds.

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 PEM 261.

In this case, there is sufficient evidence to support a finding that Claimant’s physical and mental impairments meet the disability requirements under SSI disability standards and prevent other work activities for ninety days. This Administrative Law Judge finds the Claimant is “disabled” for purposes of the SDA program.

DECISION AND ORDER

The Administrative Law Judge, based on the findings of fact and conclusions of law, decides that the Claimant is “disabled” for purposes of the Medical Assistance program and the State Disability Program.

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

Accordingly, The Department is ORDERED to initiate a review of the October 2006 application to determine if all other non-medical eligibility criteria are met. The Department shall inform Claimant of its determination in writing. Assuming Claimant is otherwise eligible for program benefits, the Department shall institute such measures as policy allows for independent management of the Claimant's benefits funds; and review Claimant's continued eligibility for program benefits in [REDACTED].

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

Date Signed: February 9, 2009

Date Mailed: February 11, 2009

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

cc:

[REDACTED]