

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: 2007-23455
Issue No: 2009, 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
December 6, 2007
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted by Administrative Law Judge Jacqueline Hall-Keith on December 6, 2007 pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department. Judge Jacqueline Hall-Keith left State employment before the hearing decision was written. The undersigned Administrative Law Judge has written this hearing decision after review of evidence in the record including the recording of the actual hearing. At the hearing, the Claimant was present and testified. Claimant was represented by [REDACTED]. Tikisha Lemons, 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") 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 filed for MA & SDA on June 19, 2007.

2. Claimant's impairments are high blood pressure, depression, headaches, hernia and hallucinations.
3. Claimant's physical symptoms are headaches, migraines, and dizziness.
4. Claimant's mental symptoms are forgetfulness, poor concentration, panic attacks when around a crowd or in elevator, confusion, anger, nervousness, poor appetite, sleep disturbances, fatigue, jittery-ness, suicidal thoughts, guilt feelings, paranoia, poor reading ability, visual and auditory hallucinations and poor self esteem.
5. Claimant is 6' 1" tall and weighs 192 pounds.
6. Claimant testified to the following physical limitations:
 - Sitting – 20 minutes
 - Standing – 20-30 minutes
 - walking – ½ block
 - Lifting – none
 - Bending – very little
7. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
8. Claimant is 57 years of age.
9. Claimant completed school through the 9th grade. Claimant never obtained a GED.
10. Claimant was last employed in 2003 as a relative care taker for his mother. Claimant cooked, cleaned, transported his mother to the doctor and administered her medicines.
11. Claimant has employment experience as follows:
 - a) Short Order Cook – involved standing, walking but no lifting.
 - b) Captain, [REDACTED] – involved taking reservations, seating customers and overseeing waiters and bartenders.
12. Claimant testified that he performs household activities such as cooking (sparingly), grocery shopping, cleaning (vacuuming) and laundry.
13. The Department found that Claimant was not disabled and denied Claimant's application on 7/26/07.
14. Medical records examined are as follows:

[REDACTED] ER Report (Exhibit 1, pp. 5-6)
COMPLAINTS: Migraine headaches, daily with vomiting and left knee pain.

PAST MEDICAL HX: hypertension, hypercholesterolemia and recent reactive depression.

MUSCULOSKELETAL: Mild prepatellar edema of the left knee. X-ray of knee revealed no bony abnormalities.

ER Report (Exhibit 1, pp. 7-8)

COMPLAINTS: Chronic recurrent headaches. (Diagnosed by neurologist as medical withdrawal headaches)

ABDOMEN: Easily reducible supraumbilical ventral hernia appreciated.

Internist Medical Exam Report (Exhibit 1, pp. 17-18)

DX: hypertension, depression, ventral hernia, hypothyroidism

GENERAL EXAM: Upset, moody

MENTAL EXAM: Agitated, moody

PHYSICAL LIMITATIONS: Lifting 25 lbs occasionally, stand/walk less than 2 hrs/8 hr day, sit about 6 hrs in 8 hour day.

Psychiatric/Psychological Exam Report (Exhibit 3)

HX: Client is hearing voices, sees shadows of dead son who has been deceased one year and three months. Client suffering major depression for five years. Short temper, can't stand to be around a crowd of people, makes him nervous. Client has no energy, chronic headache of 1 ½ years, low self esteem.

CURRENT MEDICATIONS: Geodon, Buspar/Buspione HC2, Desyrel, Neurontin, Vasotec, Dyazide, Levetiracetam Sodium, Atarax,

DX: Major depression, single with psychotic features. Rule out Schizo Affective Disorder.

MENTAL RESIDUAL FUNCTIONAL CAPACITY ASSESSMENT: Markedly limited as follows:

1. The ability to maintain attention and concentration for extended periods.
2. The ability to sustain an ordinary routine without supervision.
3. The ability to work in coordination with or proximity to others without being distracted by them.
4. The ability to make simple work related decisions.
5. The ability to interact appropriately with the general public.
6. The ability to accept instructions and respond appropriately to criticism from supervision
7. The ability to get along with coworkers or peers without distracting them or exhibiting behavior extremes.

8. The ability to respond appropriately to change in the work setting.
9. The ability to travel in unfamiliar places or use public transportation.

██████████ Medical Needs Form (Exhibit 1, p 15)

Can patient work at usual occupation? Need psychiatrist and neurologist evaluation for limitations.

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 last worked in 2003. 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 migraine headaches, hypertension, major depression with psychotic features, ventral hernia, hypothyroidism, and possible schizo affective disorder. Claimant is markedly limited in several areas of the Mental Residual Functional Capacity Assessment.

The medical evidence has established that Claimant has physical and mental 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 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 the third step of the sequential analysis of a Appendix 1 of Subpart P of 20 CFR 404. After reviewing the criteria of listing for 12.02 *Organic Mental Disorders*, the undersigned finds the Claimant's medical records substantiate that the Claimant's mental impairments meets or is medically equivalent to the listing requirements. 20 CFR 404 §12.02 describes the mental listing as follows:

Organic Mental Disorders: Psychological or behavioral abnormalities associated with a dysfunction of the brain. History and physical examination or laboratory tests demonstrate the presence of a specific organic factor judged to etiologically related to the abnormal mental state and loss of previously acquired functional abilities.

The required level of severity for these disorders are met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

- A. Demonstration of a loss of specific cognitive abilities or affective changes and the medically documented persistence of at least one of the following:
 - 3. Perceptual or thinking disturbances (e.g. hallucinations, delusions)

AND

- B. Resulting in at least two of the following:
 - Marked restriction of activities of daily living; or
 - Marked difficulties in maintaining social functioning;
 - or
 - Marked difficulties in maintaining concentration, persistence or pace; or
 - Repeated episodes of decompensation, each of extended duration

In this case, Claimant demonstrated affective changes and has been diagnosed with major depression with psychotic features (auditory and visual hallucinations). Furthermore, Claimant

was found to be markedly limited in his ability to interact appropriately with the general public or to get along with coworkers and peers. Claimant testified that he has limited social contacts. Claimant further testified that he has daily headaches, no energy, sleep disturbances, and fatigue which would affect Claimant's concentration, persistence and pace. Claimant was found to be markedly limited in his ability to maintain attention and concentration for extended periods.

Considering all of the above, the undersigned finds the Claimant's medical records substantiate that the Claimant's mental impairments meets or are medically equivalent to the listing requirements. In this case, this Administrative Law Judge finds the Claimant is presently disabled at the third step for purposes of the Medical Assistance (MA) program. As claimant is disabled, there is no need to evaluate Claimant with regards to the fourth or fifth steps.

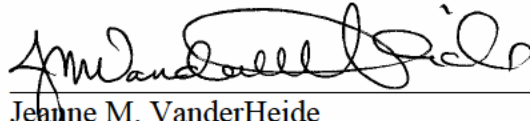
The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 1939 PA 280, as amended. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.1 et seq., and MAC R 400.3151-400.3180. 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 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.

Therefore the department is ordered to initiate a review of the application of June 19, 2007, 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 December, 2010.



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

Date Signed: 12/11/09

Date Mailed: 12/11/09

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 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/dj

cc:

