

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. 2007-04047
Issue No. 2009; 4031
Case No: [REDACTED]
Load No. [REDACTED]
Hearing Date:
November 26, 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 his representative [REDACTED] appeared at a hearing held on November 26, 2007 at the Department of Human Services (Department) in Wayne County, District 57.

The closing date was waived. Additional medical records were obtained and reviewed by the State Hearing Review Team (SHRT). SHRT denied the applications. 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), retroactive MA-P for April 2006 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 May 16, 2006 the Claimant applied for MA-P and SDA.
- (2) On August 2, 2006 the Department denied the application; and on June 28, 2008 the SHRT denied the application finding medical records support improvement and the ability to perform simple, unskilled, medium work.
- (3) On October 30, 2006 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-nine years of age.
- (5) Claimant completed grade 12; and attended Electronics College for one year; and can read and write English and perform basic math.
- (6) Claimant last worked in [REDACTED] with a work history of roofing/siding applications, furniture mover, concrete casting.
- (7) Claimant has a medical history of [REDACTED] mild heart attack, heart surgery with valve replacement in [REDACTED], hearing loss, reduced stamina, blackouts, left shoulder pain, periodontal disease.
- (8) [REDACTED], in part:
[REDACTED]: PRINCIPAL DIAGNOSIS: Sinus of Valsalva Aneurysm.
CHRONIC DIAGNOSES: Hypertension, history of delirium tremors, coronary artery disease (CAD) with myocardial infarctions x2, alcoholic hepatitis. History of alcohol abuse with DTs on withdrawal, hypertension, seizures, colon cancer, pancreatitis. Admitted with chest pain and alcohol withdrawal.

Found to have abnormal aortic aneurysm and urgent operation was performed for aortic root replacement. Due to ETOH withdrawal symptoms was seen by psychiatry and evaluated in dental clinic for multiple dental caries and will require follow up after discharge. Day of discharge was stable and to home of his sister with follow up by VNA. See cardiac surgeon before return to work. [REDACTED]

[REDACTED]: MEDICAL NEEDS: Treatment every month until [REDACTED]. Ambulatory. Needs help with appointments by driving and transferring. Return to usual or any occupation more/less by [REDACTED]

[REDACTED]: Admitted for overdose of Tylenol and alcohol with suicide attempt. Lived with sister until recently and was sober from alcohol for 6-7 weeks. Recent aortic valve replacement at [REDACTED] one month ago. Very poor historian. Living on own. EKG normal with negative cardiac enzymes. Abnormal liver function tests. Will treat medically. Currently no chest pain. Physical Examination” [Within normal limits.] Except depressed mood. Admit to psychiatry [REDACTED]

[REDACTED]: MENTAL STATUS EXAMINATION: Disagreeable, defensive, irritable, uncooperative. He reports depression and mood swings. Appears to be mood disorder in context with substance abuse and likely character pathology to see overdose in this context. Acknowledges history with alcohol with failed past treatment. Suitable for brief admission. [REDACTED]. Department Exhibit (DE) 1, pp. 75-125 and 8-59. Claimant Exhibit A, p. 6

(9) [REDACTED], in part:

HISTORY: 17 day hospitalization. Presented to ER of chronic alcoholic with multiple medical problems after a fall and possible seizure with loss of bladder control. Studies showed C-spine fractures and was placed in collar at [REDACTED]. C/O shoulder pain and head pain and smelled of alcohol. Medications: Lopressor, Coumadin, Lasix and Vicodin but states he has only been taking aspirin. Significant for homelessness but sister will be housing him.

During hospitalization was on/off the respirator for respiratory insufficiency; seizures were thought to be related to alcohol withdrawal. Test showed encephalopathy had improved. No evidence of stroke. Vertebral artery dissection on left did not

progress by MRI. Test showed cervical stenosis secondary to spondylosis. Seizures did not recur while hospitalized; and on medications. [REDACTED]. Claimant Exhibit B 1-24.

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 CFR 416.905

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 not earning wages of 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 (6th Cir 1985).

In this case, the Claimant has presented sufficient medical evidence to support a finding that Claimant had some more than minimal physical and mental limitations. See Finding of Facts 8-9. The impairments, CHF, CAD, depression are expected to last his lifetime.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's physical impairments are 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 impairments are "listed impairment(s)" or equal to a listed impairment 20 CFR 416.920(d). According to the medical evidence, alone, the Claimant cannot be found to be disabled.

Based on the medical records available, the Claimant had surgical repair and replacement of the aortic root, exacerbation of CHF, fracture of the C-spine, a suicide attempt; and at hearing testified to blackouts, decreased concentration, left shoulder pain and depression. There were no medical records submitted dated after [REDACTED]; and the hearing was held in November 2007.

The undersigned is unable to determine a relevant listing without current medical physical or mental status under Appendix 1 of Subpart P of 20 CFR, Part 404.

In this case, this Administrative Law Judge finds the Claimant is not disabled at the third step for purposes of the Medical Assistance (MA) program because of the lack of medical records. 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) prevents Claimant 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. See 20 CFR 416.945.

Claimant's past relevant work was quite heavy; roofing/siding application, furniture moving and concrete casting. Based on hearing testimony, the Claimant tried swimming and had to quit due to loss of stamina; and testified to frequent blackouts. The Claimant testified to ability to walk one block, pain and burning in left shoulder and left leg. The undersigned notes the medical records establish a severe, early age onset of cardiac abnormalities including CAD which was not related to alcoholism; and the medical records establish lack of support systems i.e. homelessness, which may be related to dysfunctional physical and mental problems.

Therefore, the undersigned finds the Claimant could not return to past relevant work or any other work for a closed time period of [REDACTED] to the time of the hearing November 2007. The undersigned decides the Claimant was disabled under step four for time periods [REDACTED] to [REDACTED] but not afterward due to lack of medical records.

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 impairments meet the disability requirements under SSI disability standards and prevents substantial gainful activities for ninety days. This Administrative Law Judge finds the Claimant is "disabled" for purposes of the SDA program for a closed time period of [REDACTED].

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, retroactive Medical Assistance and the State Disability Program for a closed time period of April 2006 to November 2007.

It is ORDERED; the Department's determination in this matter is REVERSED in part; and AFFIRMED in part for time periods after November 2007.

Accordingly, The Department is ORDERED to initiate a review of the May 2006 application for time periods April 2006 through November 2007 to determine if all other non-medical eligibility criteria are met. The Department shall inform Claimant and the representative of its determination in writing.

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

Date Signed: February 4, 2009

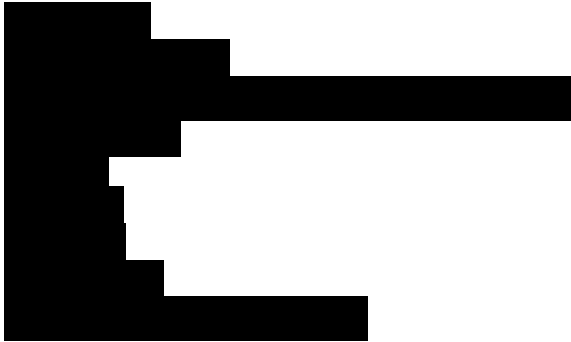
Date Mailed: February 6, 2009

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:

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