

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: 2007-18134
Issue No: 2009, 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 26, 2008
Macomb County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted by Administrative Law Judge Judith Ralston-Ellison on March 26, 2008 pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department. Judge Judith Ralston-Ellison 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. Also present on behalf of Claimant was [REDACTED] of [REDACTED], and Claimant's mother, [REDACTED]. C. Grimmatt appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA") 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 1/10/07. Claimant requested MA and SDA retroactive to 12/06.
2. Claimant's impairments have been diagnosed with high blood pressure, diverticulitis, cholecystomy, fine motor coordination issues and abdominal pain.
3. Claimant underwent a quadruple hernia surgery in October of 2007 that required him to miss three months of work.
4. Claimant's physical symptoms are abdominal pain, diarrhea (2-3 days per week) and fevers.
5. Claimant's mental symptoms are feeling overwhelmed when left alone.
6. Claimant is 6'0" tall and weighs 340 pounds.
7. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
8. Claimant is 29 years of age.
9. Claimant has a high school education. He was in special education in grades 8-12. He also has a custodial certificate from [REDACTED].
10. Claimant is currently working at [REDACTED] full time. Claimant has been working there since 2006 mostly part-time stocking shelves and emptying the bottle return.
11. Claimant has employment experience as a stocker and as a security guard.
12. Claimant testified that he performs household activities such as cooking, and cleaning.
13. The Department found that Claimant was not disabled and denied Claimant's application on 3/13/2007.
14. Medical records examined are as follows:

[REDACTED] 10/26/07 Operative Report, in part, (Exhibit A, pp. 1-3)

Ventral herniorrhaphy (four hernias in total), partial omentectomy and placement of On-Q pump.

[REDACTED], 1/28/08, in part (Exhibit B, pp. 4-9)

Patient present with left lower quadrant pain with vomiting.

[REDACTED], 5/31/07, in part (Exhibit DE 3, pp. 1-3)

COMPLAINTS AND SYMPTOMS: Depressed on and off for the last two years. He has poor concentration. He feels tired and exhausted.

DIAGNOSES: Depressive Disorder, Not otherwise specified.

[REDACTED], 5/10/07, in part (Exhibit DE, pp. 4-9)

ASSESSMENT:

1. Episodes of pain in the left middle quadrant with positive tenderness and negative computed tomographic scan with a known history of diverticulosis.
2. Possible subclinical diverticulitis.
3. Morbid Obesity

ESOPHAGOGASTRODUODENOSCOPY WITH BIOPSY – unremarkable for obstruction or lesions.

RANDOM COLON BIOPSY – Benign colonic mucosa with mild edema

GASTRIC BIOPSY – Benign gastric mucosa with very mild chronic inflammation.

[REDACTED], 1/6/06, in part (Exhibit 1, p. 130-31)

No limitations

[REDACTED], in part (Exhibit 1, pp. 123-128)

Patient presented with abdominal pain and was admitted for treatment of diverticulitis.

[REDACTED], in part, (Exhibit 1, pp. 109-113).

HISTORY OF ILLNESS: Patient has a history of learning disability, ADD/HD and mild cerebral palsy.

PSYCHOLOGICAL TEST RESULTS: Verbal IQ 87, Performance IQ 67, Full Scale IQ 76.

- He is an impulsive individual who becomes easily frustrated. He has a poor attention span and a limited capacity for new learning. He has poor abstraction ability and form categories. He is anxious at times and has difficulty completing tasks.

DIAGNOSES: Learning Disorder, Adjustment Disorder with Depressed Mood.

[REDACTED] Medical Exam Report (Exhibit 1, pp. 106-108)

[REDACTED], in part (Exhibit 1, pp. 62-86 & 114-115)
Right patellar effusion. Knee was aspirated.

[REDACTED], in part (Exhibit 1, pp. 62-86 & 114-115)

[REDACTED], in part (Exhibit 1, pp. 33-59)

ADMITTING DIAGNOSIS:

1. Cellulitis of the leg
2. Enthesopathy of the knee
3. Hypertension
 - bursectomy one month previous to admission. Impression – recurrent bursitis. Knee was aspirated.

[REDACTED], in part, (Exhibit 1, pp. 1-32 & 87-97)

1. Diverticulitis of colon
2. Hypertension
3. Gastroesophageal reflux disease

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). In this case, under the first step, client is not working enough hours or making enough wages for his employment to qualify as substantial gainful activity. 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 of diverticulitis, high blood pressure disease, learning disability and mild cerebral palsy. The medical evidence has established that Claimant has a physical impairment that has more than a minimal effect on basic work activities; and Claimant’s impairments have lasted continuously for more than twelve months.

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 supports a finding 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 is found to be disabled.

Appendix I, Listing of Impairments (Listing) discusses the analysis and criteria necessary to a finding of a listed impairment. The Listing 12.05 *Mental Retardation* was reviewed.

Mental Retardation: Mental retardation: Mental retardation refers to significantly sub average general intellectual functioning with deficits in adaptive functioning initially manifested during the developmental period; i.e., the evidence demonstrates or supports onset of the impairment before age 22.

The required level of severity for this disorder is met when the requirements in A, B, C, or D are satisfied.

- C. A valid verbal, performance, or full scale IQ of 60 through 70 and a physical or other mental impairment imposing an additional and significant work-related limitation of function. OR
- D. A valid, performance or full scale IQ of 60 through 70, resulting in at least two of the following:
 - a. Marked restriction of activities of daily living; or
 - b. Marked difficulties in maintaining social functioning; or
 - c. Marked difficulties in maintaining concentration, persistence, or pace; or
 - d. Repeated episodes of decompensation, each of extended duration.

In this matter, the medical records establish that Claimant has a Performance IQ of 67 in 2005. Claimant's mother testified that Claimant has always had issues. Claimant was in special education in high school and has a history of being AD/HD. The testimony also revealed that while Claimant can read, he has difficulty remembering what he reads. This is supported by the 2005 psychological exam which indicates that Claimant can read something ten times and still not understand it. In addition, the testimony revealed that Claimant has difficulty staying by himself as he experiences anxiety and feeling overwhelmed.

In addition, Claimant has medical issues that have affected his ability to work consistently. Claimant's ongoing diverticulitis has caused Claimant to miss work for hospital admissions. Claimant further experiences diarrhea several times a week which comes on quickly and requires several immediate trips to the bathroom.

Therefore, 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 her 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 as of December 2006.

Therefore the department is ORDERED to initiate a review of the application of January 10, 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 in April, 2010.

/s/

Jeanne M. VanderHeide
Administrative Law Judge
for Judith Ralston-Ellison

Date Signed: 05/22/09

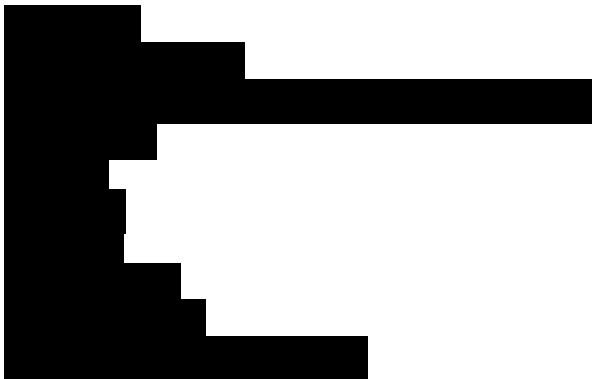
Date Mailed: 05/26/09

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:

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