

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

██████████

Claimant

Reg. No. 2007-22127

Issue No. 2009; 4031

Case No:

Load No.

Hearing Date:

November 28, 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 appeared at a hearing held on November 28, 2007 at the Department of Human Services (Department) in Wayne County ██████████

The record was left open to obtain new medical information. The undersigned issued an Interim Order for new medical information; and Independent Medical Exams. No new medical records were received. The record closed. This 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 (MA) program and State Disability Assistance (SDA) 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) On December 15, 2006 the Claimant applied for MA-P and SDA; and the Department denied the application March 5, 2007 but the Claimant reapplied April 20, 2007.

(2) On October 18, 2007 the SHRT denied the application due to insufficient medical records.

(3) On July 11, 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 years of age.

(5) Claimant completed grade 8; and had auto body training; and difficulties reading and writing English, can count coins; and all applications were written/completed with help of others.

(6) Claimant was last employed in 1979 doing auto body repair; and was a cook at a restaurant and worked at a car wash.

(7) Claimant alleges a medical history of schizophrenia and depression diagnosed in 2001, breathing problems due to emphysema, temporary colostomy, low back pain, weak left leg, arthritis of both hands and hepatitis A.

(8) December 2006, in part:

Hepatitis A—positive. Department Exhibit (DE) 1, pp. 17-21.

CURRENT DIAGNOSIS: Diverticulitis with sigmoid colectomy, colostomy with Hartman's pouch.

Height 6'2", Weight 160, Blood pressure 110/72.

NORMAL EXAMINATION AREAS: HEENT; General, HEENT, Cardiovascular, Abdominal, Musculoskeletal, Neuro, Mental.

ABNORMAL EXAMINATION AREAS: Respiratory: bilateral expiratory wheezes. Abdomen: midline laparostomy LLQ ostomy—pink/patent/productive.

CLINICAL IMPRESSION: Stable.

PHYSICAL LIMITATIONS: Limitations expected to last over 90 days; Lifting/carrying: GSW shattered pelvis but up to 10 pounds 2/3 of 8 hour day; 20 pounds 1/3 of 8-hour day, never 25 or over; only stand/walk 15-30 minutes; assistive devices are medically needed; use of both hands/arms for simple grasping; reaching, pushing/pulling and fine manipulating but arthritis is noted; use of both feet/legs for operating foot controls. **FINDINGS:** arthritis right knee, wrist and ankles

MENTAL LIMITATIONS: depression, schizophrenia. Cannot meet own needs in home, needs help with getting out of bathtub. Medications: Zyprexa (Celebrex)

MEDICAL NEEDS: Chronic ongoing illness—arthritis. Needs treatment for 2-3 months after reversal of colostomy. Needs cane to ambulate and care services for colostomy. Cannot return to work for extended time. Living in shelter, unemployed. [REDACTED]

[REDACTED] Department Exhibit 1 pp. 11-12 and 15.

HISTORY: C/O increasing shortness of breath especially with climbing stairs. Positive for headache, memory loss since head injury in 1997 with poor recall of events and numerous stressors.

CURRENT DIAGNOSIS: History of LBP, unknown etiology, polysubstance abuse with ETOH. Diverticulitis/colostomy. C/O pain, wrists and knees, nicotine dependence, emphysema, depression/schizophrenia.

Height 6'2", Weight 185, Blood pressure 119/82.

NORMAL EXAMINATION AREAS: Cardiovascular, Musculoskeletal, Neuro.

ABNORMAL EXAMINATION AREAS: General: VAS 8/10-9/10 knee and wrists. Positive for nasal congestion and erythema. Respiratory: upper airway congestion. Abdomen: colostomy patient. Mental: full psychiatric evaluation diagnosing depression and schizophrenia.

CLINICAL IMPRESSION: Stable.

PHYSICAL LIMITATIONS: No physical limitations. Mental limitations in memory. **FINDINGS:** Currently in care of psychiatrist with treatment for ETOH; and needs complete neuropsych eval for memory loss changes from baseline. Can meet own needs in home. Medications: Zyprexa, Elavil, Zantac, Paroxetine.

MEDICAL NEEDS: Chronic ongoing illness. Needs treatment every 3 months rest life. Ambulatory. Care services for colostomy does himself. Cannot return to work ever per psychiatry. [REDACTED] Exhibit 1 pp. 13-14 and 16.

(9) April 2007, in part:

Consumer with out agency [REDACTED] since 2003. He sees a psychiatrist one-time a month for medication and the therapist bimonthly. Diagnosis: Schizo-affective Disorder. His mental state is in part due to his physical condition. [REDACTED]. DE 5 and 6.

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 not performing SGA since 1979 and is not working. Therefore, 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 (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 medical evidence supporting mental impairments and some physical limitations on his abilities to perform basic work activities. The medical evidence has established that Claimant has mental/physical impairments that have more than a minimal effect on basic work activities. It is necessary to continue to evaluate the Claimant’s impairments under step three.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant’s mental 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 physical impairments 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. In this matter, the medical records provide circumstantial evidence of mental/physical impairments. See Finding of Facts 8-9. The medical records are insufficient to establish criteria needed to evaluate under Appendix 1 of Subpart P of 20 CFR, Part 404.

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 due to 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) prevent 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 in 1979 auto body repair. [REDACTED] opines the Claimant cannot return to past relevant work or any other work.

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 functional capacity," defined simply as "what can you still do despite you 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 limitations.

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 fifty is considered *closely approaching advanced age*; a category of individuals age 50-54. 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 201.09, for approaching advanced age, age 50-54; education: limited or less [grade 8]; previous work experience, unskilled or none [last work was thirty-years ago]; the Claimant is “disabled” per Rule 201.09.

It is the finding of the undersigned, based upon the medical data and hearing record that Claimant is “disabled” at the fifth step.

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

employment 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 December 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 review Claimant’s continued eligibility for program benefits in February 2010.

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

Date Signed: February 24, 2009

Date Mailed: February 26, 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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