

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. 2007-27703

Issue No. 2009

Case No:

Load No. [REDACTED]

Hearing Date:

April 24, 2008

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 her representative, ADVOMAS, and counselor, Renata Petrons appeared at a hearing held on April 24, 2008 at the Department of Human Services (Department) in Wayne County.

The closing date was waived. Additional medical records were obtained and reviewed by the State Hearing Review Team (SHRT). SHRT denied the application. The matter is now before the undersigned for final decision.

ISSUE

Whether the Department properly determined the Claimant is "not disabled" for purposes of Medical Assistance based on disability (MA-P) program and retroactive MA-P for the months of November, December 2006 and January 2007 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 February 28, 2007 the Claimant applied for MA-P.
- (2) On May 8, 2007 the Department denied the application; and on November 3, 2008 the SHRT guided by Vocational Rule 203.18 denied the application finding the medical records supported the capacity to perform medium work; and that mental impairment was not severe.
- (3) On August 6, 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-five years of age.
- (5) Claimant completed grade 8; and can read and write English and perform basic math.
- (6) Claimant last worked in 2003 as a raker on a factory line.
- (7) Claimant has a medical history of COPD with fatigue and shortness of breath still smoking one pack per day; asthma, hepatitis C treated with Interferon but with fatigue, low energy, right sided pain with muscles spasms and restless leg syndrome and depression/bipolar disorder with decrease in concentration and memory; and monthly suicide ideation and occasional rage episodes; and history of use of heroin with sobriety for two and one-half years.
- (8) [REDACTED], in part:

Admitted with history of hepatitis C and depression taking Paxil and Geodon. Presented to ER with hypoxemic with pulse oximetry of 86% room air. Chest x-ray showed evidence of chronic obstructive pulmonary disease (COPD). Smoker of one-two packs

a day for several years. History of IV drug use and marijuana but stopped. Physical Examination: [Within normal limits.] Except lungs diminished breath sounds.

Chest x-ray: heart size normal, no focal stress of airspace consolidation, pleural effusion or vascular congestion. IMPRESSION: No active lung disease. Medically treated and counseled on smoking cessation. In hurry to go home. Discharge papers signed. [REDACTED]. Department Exhibit (DE) 1, pp. 20-32.

- (9) [REDACTED], in part:

January: To ER with shortness of breath and inhaler did not help. X-ray showed COPD. Current smoker of one to two packs a day. WBC low due to Interferon treatment. Physical Examination: [Within normal limits.] Except lungs with mild rhonchi bilaterally. Medically treated for COPD. Upper endoscopy normal. Hepatitis C is stable. Anxiety and Panic attack treated with Ativan and Geodon at home. Depression with Paxil. Muscle pain treated with Robaxin. Strongly advised to stop smoking. Discharged in stable condition to follow up for colonoscopy and with PCP. [REDACTED]. DE 1, PP. 33-62.

March: CURRENT DIAGNOSIS: Hep C, COPD, Mood disorder, RLS.

Height 65", weight 124, BP 90/70.

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

CLINICAL IMPRESSION: Stable.

PHYSICAL LIMITATIONS: Limited and expected to last more than 90 days. Lifting/carrying less than 10 pounds ½ of 8 hour day, never 10 or over. Stand and/or walk less than 2 hours in 8 hour day. No assistive devices needed to walk. Use of either hand/arms for simple grasping, reaching, pushing/pulling and fine manipulating. Use of either feet/legs for operating foot controls. Can meet own needs in the home. Mental limitations in social interaction. Medications: Paxil, Zyprexa, Seroquel, Neurontin, [REDACTED]. DE 1, pp. 14-15 and DE 7, pp, 1-2.

- (10) Over one year later in [REDACTED] in part:

Mental Residual Functional Capacity: Moderately limited in areas of understanding and memory, sustained concentration and persistence, social interaction and adaptation. Axis I: Bipolar

disorder/Affect-Manic/Mild. Drug dependence, unspecified.
[REDACTED]

July: To ER for chest pain. HISTORY: COPD, bipolar disorder, general anxiety disorder. Current medications: Geodon, Seroquel, Zyprexa. Smokes one pack cigarettes a day. Self-employed as a cleaner. Mildly active.

PHYSICAL EXAMINATION: Vital signs, General, HEENT, Neck, Chest, CVS, Abdomen, CNS, Extremities: [All within normal limits.] Chest x-ray, CAT scan chest, EKG no acute abnormalities. Stress Test: CONCLUSIONS: inadequate, the heart rate precludes any different conclusion. Negative chronotropic response to exercise. Flat response to exercise. [REDACTED], [REDACTED]. Claimant Exhibit.

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 2003. But medical records report the claimant was self-employed as a cleaner in July 2008. No additional evidence is available. Without more, 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 that support both mental and physical impairments. See Finding of Facts 8-10. The medical evidence has established that Claimant has a mental/physical impairment that has 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 physical and 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 mental and 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 establish a diagnosis of chronic obstructive pulmonary disease (COPD) and bipolar disorder. The Claimant is also tobacco dependant; having smoked for several years. The Claimant was advised to stop smoking in [REDACTED] and continued to smoke as evidenced by the medical records to [REDACTED]. The undersigned notes 20 CFR 416.930; and the need to follow prescribed treatment.

(a) What treatment you must follow. In order to get benefits, you must follow treatment prescribed by your physician if this treatment can restore your ability to work, or, . . . if the treatment can reduce your functional limitations so that they are no longer marked and severe.

(b) When you do not follow prescribed treatment. If you do not follow the prescribed treatment without a good reason, we will not find you disabled or blind or, if you are already receiving benefits, we will stop paying you benefits.

Appendix 1 of Subpart P of 20 CFR, Part 404. Listing 12.04, *Affective Disorders*; and 3.02 *Respiratory system*, most closely align with the diagnosis of the Claimant's physical and mental impairments. After reviewing the criteria of the listings, the undersigned finds the Claimant' medical records do not meet the intent and severity of the listing requirements.

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. 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 factory work. Evidence in [REDACTED] indicates a reported self-employment as a cleaner. The undersigned notes the medical records of [REDACTED] prescribing limitations was in [REDACTED]. There were no medical records from [REDACTED] to [REDACTED]; and the undersigned concludes the Claimant (if working as a cleaner) does not need

the physical restrictions of [REDACTED]. But the undersigned has no evidence of the Claimant's SGAs for [REDACTED], so decides to not return her to past relevant work in a factory.

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 totality of 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 light work. Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines 20 CFR 416.969:

202.00 Maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s). (a) The functional capacity to perform a full range of light work includes the functional capacity to perform sedentary as well as light work. Approximately 1,600 separate sedentary and light unskilled occupations can be identified in eight broad occupational categories, each occupation representing numerous jobs in the national economy. These jobs can be performed after a short demonstration or within 30 days, and do not require special skills or experience.

(b) The functional capacity to perform a wide or full range of light work represents substantial work capability compatible with making a work adjustment to substantial numbers of unskilled jobs and, thus, generally provides sufficient occupational mobility even for severely impaired individuals who are not of advanced age and have sufficient educational competences for unskilled work.

(c) However, for individuals of advanced age who can no longer perform vocationally relevant past work and who have a history of unskilled work experience, or who have only skills that are not readily transferable to a significant range of semi-skilled or skilled work that is within the individual's functional capacity, or who have no work experience, the limitations in vocational adaptability represented by functional restriction to light work warrant a finding of disabled. Ordinarily, even a high school education or more which was completed in the remote past will have little positive impact on effecting a vocational adjustment unless relevant work experience reflects use of such education.

(d) Where the same factors in paragraph (c) of this section regarding education and work experience are present, but where age, though not advanced, is a factor which significantly limits vocational adaptability (*i.e.*, closely approaching advanced age, 50-54) and an individual's vocational scope is further significantly limited by illiteracy or inability to communicate in English, a finding of disabled is warranted.

Claimant at fifty-five is considered *advanced age*; a category of individuals age 55 and over. Under Appendix 2 to Subpart P: Table No. 1—Residual Functional Capacity: Maximum Sustained Work Capability Limited to Light Work as a Result of Severe Medically Determinable Impairment(s), Rule 202.01, for advanced age, age 55; education: limited or less; previous work experience, unskilled or none; the Claimant is “disabled” per Rule 202.01.

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

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.

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

Accordingly, The Department is ORDERED to initiate a review of the February 2007 application to determine if all other non-medical eligibility criteria are met. The Department shall

inform Claimant and the representative 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 [REDACTED].

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

Date Signed: February 12, 2009

Date Mailed: February 17, 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]