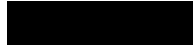


STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Claimant

Reg. No.: 2007-30090

Issue No.: 2009

Case No.:

Load No.:

Hearing Date:

March 31, 2008

Kent 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, a hearing was held on March 31, 2008. The Claimant's representative appeared by telephone; and the Department of Human Service (Department) in Kent County appeared by telephone. The Claimant did not appear and was said to be incarcerated.

The record was left open to obtain medical information up to February 2008 and an affidavit from the Claimant confirming March 2008 status of ability to perform substantial gainful activities.

Medical records for December 2007 were received but these medical records were merely copies of previously submitted medical records. State Hearing Review Team (SHRT) reviewed and the application was denied. 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 based on disability (MA-P) and retroactive MA-P for the month of November 2007 and State Disability Assistance 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) The Claimant filed an application for MA-P on December 14, 2007 and State Disability Assistance (SDA) was granted to April 2008.
- (2) On July 18, 2007 the Department denied the application; and on June 11, 2008 the SHRT denied the application finding the medical records established a non-severe impairment per 20 CFR 416.920(c) and the materiality of substance abuse per 20 CFR 416.935.
- (3) On August 2, 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 was thirty-two years of age.
- (5) Claimant completed grade 11 and a GED; and can read and write English. Department Exhibit (DE) 1, pp. 173-178.
- (6) Claimant last worked in 2003 at a factory; and was a restaurant cook. DE 1, p. 177.
- (7) Claimant has alleged a medical history of severe emotional impairment.
- (8) [REDACTED], in part:
[REDACTED]: X-rays skull: normal; X-rays lumbar spine: normal except 5^h lumbar intervertebral disc space narrowed. [REDACTED], [REDACTED]. DE 1, p. 144.

██████████ ██████████ ██████████ MICHIGAN DEPARTMENT OF CORRECTIONS: Diagnostic formulation: Cocaine dependence; Depressive Disorder. Current Medications: Metformin, Lisinopril, Cotaar, Motrin, Seroquel, Gabapentin. Medically stable. No cognitive impairment. History of past psychiatric treatment. Denies suicidal/homicidal ideation.

Several incarcerations for carrying a gun, delivery of cocaine and attempted uttering and publishing. He seems more connected to criminal lifestyle than drug use. Referred to treatment while on probation by dropping positive urine drug screens. Not employed but typically finds work as a chef, owned a hamburger restaurant for one year. But seeking disability income for diabetes, high blood pressure and back/leg pain. Projected discharge date ██████████.

Problems: Criminal thinking; Substance abuse/Dependence; Self concept deficits; Spiritual confusion. ██████████ ██████████. DE 1, pp. 165-169.

██████████ Presenting issues: medication stabilization; substance abuse; increase of specific symptoms; not eating/sleeping; thoughts of suicide. OBSERVATIONS: quiet, poor eye contact. Not wanting to talk. Appears to be aware of the issues and to be treated with medications and wants to return home.

Alcohol last use two days ago. Cocaine last use two days ago. On suicide precautions with check every 15 minutes. Suicidal thoughts for past two years without attempts. No homicidal ideation. A number of legal involvements drug related. Current medications: Cymbalta and Paxil. DIAGNOSTIC IMPRESSIONS: Major depression, recurrent with psychotic features. Cocaine and alcohol dependence. Transferred to ██████████ outpatient. Discharged home, fully ambulatory with medications: Wellbutrin, Paxil, Zyprexa and [Illegible] ██████████. Claimant Exhibit [Pages unnumbered.]

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, the Claimant did not appear at the hearing. The representative, [REDACTED] stated the Claimant was incarcerated but dates of his incarceration were not known nor was evidence submitted before the record closed; and no medical evidence dated after December 2007 was submitted. The representative was requested to submit notarized affidavit of the Claimant’s substantial gainful activities for time periods after December 2007. No evidence was received of the Claimant’s substantial gainful activities. Thus, at step one; the Claimant must be disqualified for MA-P.

The undersigned finds the Claimant ineligible for MA at step one due to lack of evidence of ability to perform substantial gainful activity after December 2007.

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 insufficient evidence to support a finding that Claimant's impairments meet the disability requirements under SSI disability standards, and prevents past relevant or any other work for ninety days. This Administrative Law Judge finds the Claimant is presently "not 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 "not disabled" for purposes of the Medical Assistance and State Disability Assistance programs.

