

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.: 2008-10502
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No. [REDACTED]
Hearing Date:
April 9, 2008
Calhoun County DHS (21)

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 April 9, 2008 at the Department of Human Service (Department) in Calhoun County. The Claimant appeared for the hearing.

The record was left open to obtain additional medical information. An Interim Order was issued for additional medical records and no new medical records were received. The record closed.

The Department in Calhoun County informed the legal assistant in our office that the Claimant began receiving medical assistance beginning August 2008. Thus, the matter now before the undersigned for final decision is a closed period from August 2007 to July 2008.

ISSUES

Whether the Department properly determined the Claimant is "not disabled" for purposes of Medical Assistance based on disability (MA-P) and State Disability Assistance (SDA) programs for the time period August 2007 through July 2008?

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 August 28, 2007 the Claimant applied for MA-P and SDA.
- (2) On October 11, 2007 the Department denied the application; and on March 14, 2008 SHRT denied the application finding the medical records did not establish a physical/mental impairment that prevented basic work activities; and citing the materiality of alcohol and substance abuse per PL 104-121.
- (3) On November 27, 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 forty-one years of age for the time periods at issue.
- (5) Claimant completed grade 12 and three years of college; and can read and write English and perform basic math.
- (6) Claimant last worked in 2005 as a truck driver; and in maintenance on/off and did clerk for an ALJ.
- (7) Claimant has alleged a medical history of chronic pain of right leg/ankle, back pain, right shoulder pain with pain to elbow/hands; and bipolar disorder with history of ETOH and rehab at the [REDACTED].
- (8) 2007, in part:
 - March: X-rays right hand and right wrist: IMPRESSION: Normal right hand and right wrist.
 - August: Routine mental health follow up/medication review: Court custody events over son. States taking prescribed medications but

has not received refills from pharmacy. Doing well in school. Keeps in touch with girlfriend in [REDACTED].

Current General Functioning: Sleep continues to be a problem. Appetite varies. Mood swings of anger, anxiety and depression. Denies suicidal/homicidal ideation except as fleeting thoughts without history of attempts of suicide/homicide. Denies hallucinations and admits to paranoia. Unsure if has side effects to medications. Reports no recent use of drug/alcohol. Non-smoker but uses Skoal. Observations: Dressed appropriately, neat, adequately groomed. Maintains eye contact and easily initiates and participates in conversations. Mood is generally anxious and similar to his usual presentation and affect is congruent and responsive. Fully orientated, limited insight and judgment, speech clear. Though flow and content appropriate and no psychotic s/s observed. Cooperative and pleasant. No shown risk factors for suicide. History of impulsivity, alcohol/drug abuse and non-compliance with medications. IMPRESSION: Bipolar disorder, mixed by history; PTSD with secondary depressive disorder. Continue psychotropic medications. [REDACTED]

September: In August was seen for C/O numbness both hands after disposition of ulnar nerve. EEG showed ulnar sensory neuropathy. But have multiple somatic complaints, treatments and hospitalizations. Physical Examination: no distress, nervous appearance, bilateral upper extremity parathesia/pain extends bilateral hands but normal strength and ranges of motion on upper extremities. Normal grip strength both hands. Some pain on abduction on shoulder with normal strength and range of motion.

Lower back pain without radicular symptoms, near full range of motion of lumbosacral (LS) spine. SLR full, DTR normal. Normal strength of lower extremities. Minimally reduced dorsiflexion of right foot. No swelling or edema notes. X-rays hands, wrist, c and t-spine are negative.

IMPRESSION: chronic pain with subjective symptoms. S/P repair of right labral of shoulder. I told the vet I didn't feel comfortable filling out disability paper. [REDACTED] Department Exhibit (DE) 1, pp. 283-284 and 210-309.

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 2005. 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 (6th Cir 1985).

In this case, the Claimant has presented medical evidence of physical/mental impairments more than minimal and impacting his abilities to perform basic work activities. It is necessary to continue to evaluate the Claimant’s impairments under step three. Records were

submitted from 2005 of [REDACTED] treatment for physical/mental impairments. See finding of fact 8.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's 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/physical impairment is a "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 some range of motion limitations and sensory loss of the right arm. Loss of function is the criteria to be met under Listing 1.00 *Musculoskeletal System*, Appendix 1 of Subpart P of 20 CFR, Part 404. The medical records do not establish the severity and intent of this listing. The Claimant has unlimited ability to walk and the Claimant's testimony of being able to drive establishes ability to use his upper extremities.

Appendix 1 of Subpart P of 20 CFR, Part 404, Listing Mental disorder was reviewed; and the Claimant did not submit medical records establishing the severity and intent of 12.04, *Affective Disorders*. The Claimant was being medically treated and responding well to medication treatment. See finding of fact 8. The medical records indicate the Claimant has returned to school. This establishes function both mentally and physically. See finding of fact 8. No other records were submitted for time periods in 2008.

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 truck driving. But the Claimant's testimony at hearing, was that he cannot return to past relevant work due inability to lift over 16 pounds or sitting for periods longer than 30 minutes. Based on this testimony, and the data in the medical records, the Claimant can not return to past relevant 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 function capacity," defined simply as "what you can still do despite your 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 impairments.

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 forty-one for the time periods at issue, is considered a *younger individual*; a category of individuals age 18 to 49. 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 201.28, for younger individual, age 18 to 49; education: high school graduate or more; previous work; skilled or semiskilled skills not transferable, the Claimant is not disabled per Rule 201.28.

It is the finding of the undersigned, based upon the medical data and hearing record that Claimant is “not 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 insufficient medical evidence to support a finding that Claimant's impairments meet the disability requirements under SSI disability standards, and prevents other work activities for ninety days. This Administrative Law Judge finds the Claimant is "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 program.

It is ORDERED; the Department's determination in this matter is AFFIRMED.

/s/

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

Date Signed: [REDACTED] _____

Date Mailed: [REDACTED] _____

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

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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.

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