

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. 2008-11435
Issue No. 2009; 4031
Case No: [REDACTED]
Load No. [REDACTED]
Hearing Date:
June 9, 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 his representative [REDACTED] appeared at a hearing held on June 9, 2008 at the Department of Human Services (Department) in Wayne County, District 18. [REDACTED] were also at the hearing.

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.

ISSUES

Whether the Department properly determined the Claimant is "not disabled" for purposes of Medical Assistance based on disability (MA-P), retroactive MA-P for the months of March, April and May 2007 and State Disability Assistance (SDA) 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) On June 25, 2007 the Claimant applied for MA-P and SDA.
- (2) On October 16, 2007 the Department denied the application; and on August 15, 2008 the SHRT guided by Vocational Rule 203.10 denied the application because medical records support the ability to perform a wide range of unskilled light work.
- (3) On December 13, 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 a GED.
- (6) Claimant last worked in [REDACTED] as a porter at a bowling center; filling vending machines, at a plastics factory as press operator, and for his brother at an electrical company.
- (7) Claimant has a medical history of congestive heart failure (CHF), bronchitis using oxygen in supplement, chronic obstructive pulmonary disease (COPD), hypertension, sleep apnea, metabolic obesity and pain of low lumbar back with depression/paranoia since childhood and suicide ideation in [REDACTED].

- (8) [REDACTED], in part:

[REDACTED] Diagnoses: Drug overdose (Seroquel), COPD, Depressive disorder, cocaine abuse. States no suicidal ideation and states was trying to scare family. Smoker of 1.5 ppd. Urine drug screen positive for cocaine. Chest X-ray showed cardiomegaly. EKG was normal. . Last evaluation in [REDACTED] was obstructive sleep apnea and was to use BiPAP. Troponins were negative. Physical Examination positive for decreased air entry in bilateral lungs and chronic venous stasis and 1+ edema of bilateral lower extremities.

Discharged home in stable condition, medications prescribed: Lasix, KCL, MV, B complex, aspirin, Zoloft, Lininopril, Seroquel. Follow up with PCP one week. [REDACTED]

[REDACTED] To ER with C/O depression, suicidal thoughts and non compliant with medications. Physical status on admission was fair. Put on ward milieu and was able to respond to milieu treatment and medications and continued to make progress. Was discharged home and during this hospitalization his laboratory tests were essentially normal. MENTAL STATUS ON DISCAHRGE: alert, fully orientated, cooperative, friendly, cheerful, pleasant, denied hallucinations and suicidal or homicidal ideas. Insight and judgment improved. Physical statis was fair without acute distress. [REDACTED]. Department Exhibit (DE) 1, pp. 108-141.

(9) [REDACTED], in part:

Psychiatric Report: Mental status examination: orientated to person, place and time. Abstract answers correct X 2, Fearfulness of staying alone, 5 numbers correct after 5 minutes. Axis I: Major depressive disorder, Cocaine dependence in remission. Markedly limited in ability to complete normal workday without interruptions from psychologically based symptoms. Able to manage own benefit funds. [REDACTED].

CURRENT DIAGNOSIS: Shortness of breath, hypertension, congestive heart failure, low back pain, major depression, obesity. HT 5'10", WT 257, BP 160/80, Vision best corrected right 20/40, left 20/40.

EXAMINATION AREAS: General: obese, respiratory distress, ambulatory with assistive aid, fatigue. HEENT: short sighted reading glasses. Respiratory: Wheezing, sleep apnea, COPD, CPAP at night. Cardiovascular: chest pain, ejections fraction less than 40. Abdominal: BS, obese. Musculoskeletal: low back pain and scoliosis. Neuro: lumbar radiculopathy. Mental: psychiatric care for major depression.

CLINICAL IMPRESSION: Deteriorating.

PHYSICAL LIMITATIONS: Limited, expected to last over 90 days; limited walking; Lifting/carrying less than 10 pounds 1/3 of 8 hour day, never 10 or over; stand and/or walk less than 2 hours in 8 hour day; no assistive devices are needed; use of BiPAP for breathing; use of both hands/arms for simple grasping, reaching, pushing/pulling no fine manipulating. Cannot meet own needs in home. MENTAL LIMITATIONS: memory, sustained concentration, social interaction. [REDACTED].

[REDACTED]. DE 1, pp. 84-92.

(10) [REDACTED], in part:

HISTORY OF PRESENT ILLNESS: Gets shortness of breath walking one block at street level and climbing one flight of stairs, gets wheezing and uses Albuterol inhaler and attack subsides. Uses four times a day. States diagnosed with sleep apnea and was to use CPAP but does not presently use one. Gets heartburn, appetite good. Lower back pain for ten years and pain in knee joints. Can stand one hour, sit one hour. Can manage to do household chores. Using both hands can lift 10-20 pounds from the floor and carry 10-20 feet. Does not use assistive devices. Takes medications for depression. Memory fair, gets numbness both feet. No weakness, dizziness, tingling or involuntary movements. Smokes one pack cigarettes a day for 37 years. Says stopped beer in [REDACTED] and stopped marijuana and cocaine in [REDACTED]

PHYSICAL EXAMINATION: WT 301, BP 110/80. Fundi (Retina) normal. HEENT, Neck, Chest, CVS, Abdomen, Skin, Extremities, Spine, Bones and Joints, Nervous System: [All within normal limits.] Grip 5/5 both hands, Muscle power in all four extremities. Gait and stance normal. Chest X-ray: no active pulmonary disease. No significant abnormal physical findings.

Findings: Obesity with thick chest wall, abdomen, and extremity pulses. Spine: only flexion is restricted, restriction could be related to obesity or osteoarthritis. Straight leg raising caused pain. Flexion of hip restricted to 85 degrees. Crepitis in both knees suggesting osteoarthritis. Squatting limited to 50% due to pain and obesity. Lung expansion less than normal. Pulmonary Function Test revealed restrictive but no obstructive airway disease or cor pulmonale. Has not been using CPAP. [REDACTED]

MENTAL STATUS EXAMINATION: Takes Wellbutrin, Zoloft, Desyrel and Envegoa and the psychiatric medication helps “enormously.” Takes medication for blood pressure and cholesterol. Not using BiPAP or oxygen for sleep apnea for over one year. Uses Albuterol inhaler and Advair.

DIAGNOSES: Major depression, chronic, severe, with paranoid features. Impulse control disorder—history of pedophilia x2 reported. Nicotine dependency. Stress exacerbating physical conditions. Other polysubstance abuse with remote history including marijuana, pills, THC, mescaline, alcohol as teenager. Not able to manage benefit funds due to abuse potential. Does not appear able to work due to notable depression and defuse paranoia

and multiple somatic complaints [REDACTED]
[REDACTED]. DE N, pp. 1-19.

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 SGA. 20 CFR 416.920(b). In this case, under the first step, Claimant testified to not engaging in SGA

since [REDACTED] Therefore, the Claimant is not disqualified from 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 sufficient medical evidence to support a finding that Claimant has multiple physical limitations; and mental dysfunctions. The medical evidence has established that Claimant has physical and mental impairments that have more than a minimal effect on basic work activities. The Claimant's impairments have lasted continually for 12 months. See Finding of Facts 8-10.

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 will not support findings that the Claimant's impairments are 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. The undersigned's decision was based on Listing 1.00 *Musculoskeletal System*; Listing 3.00 *Respiratory System*; and Listing 12.00 *Mental Disorders*.

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 because the medical records do not establish the severity or marked difficulties needed to meet a listing level impairment. 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 him 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.

Past relevant recent work was porter at a bowling alley. With the impairments established in the medical records the Claimant cannot return to past relevant work; or even earlier performed work. The undersigned finds the Claimant cannot return to past relevant work. Evaluation under step five is necessary.

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 based on the findings in the medical records. See Finding of Facts 8-10. 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 *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 201.10 for approaching advanced age, age 50-54; education: limited or less; previous work experience, skilled or semi-skilled—skills not transferable; the Claimant is “disabled” per Rule 201.10.

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 physical and mental impairments meet the disability requirements under SSI disability standards and prevent substantial gainful activities 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 June 2007 application to determine if all other non-medical eligibility criteria are met. The Department shall inform Claimant and the authorized 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 February 2010.

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

Date Signed: February 3, 2009

Date Mailed: February 6, 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.

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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:

