

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.: 2008-12569
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
June 25, 2008
Wayne County DHS (49)

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 June 25, 2008 at the Department of Human Service (Department) in Wayne County, District 49. The Claimant and his mother, [REDACTED] appeared for the hearing.

The record was left open to obtain additional medical information. The Claimant submitted some information of prescriptions and hospital discharge instructions. An Interim Order was issued for additional medical information and independent medical examinations. No new medical records were received; and 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 based on disability (MA-P) 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 May 17, 2007 the Claimant applied for MA-P and SDA.
- (2) On August 17, 2007 the Department denied the application; and on April 22, 2008 the SHRT denied the application finding the medical records did not establish a mental/physical impairment that prevented basic work activity.
- (3) On September 12, 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 forty years of age.
- (5) Claimant attended school in special education ages 12 to 16 years.
- (6) Claimant last worked in 2000; washing cars.
- (7) Claimant has alleged a medical history of MVA in 1995, hitting his head; and currently with decreased concentration, memory, nervousness and forgetfulness.
- (8) March 2007, in part:

HISTORY: MVA, C/O memory loss

CURRENT DIAGNOSIS: HTN, memory lapse, [Illegible], GERD.

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

FINDINGS: General: forgetful. Abdomen: tenderness. Neuro: [Illegible].

CLINICAL IMPRESSION: Stable.

PHYSICAL LIMITATIONS: Limited, expected to last over 90 days; Lifting/carrying up to 20 pounds 2/3 of 8 hour day; never 50 or over; stand and/or walk less than 2 hours in 8 hour day; use of both arms/hands for simple grasping, reaching, pushing/pulling, fine manipulating; use of both feet/legs for operating controls. Cannot meet own need in home due to memory. MENTAL LIMITATIONS: memory and sustained concentration. [REDACTED]

[REDACTED]. Department Exhibit (DE) 1, pp. 11-12.

- (9) July 2007, in part:

Independent Psychological Consultation: All information was obtained from the Claimant and his mother who was both unable to be specific about the Claimant's school attended or length of time or grade completed.

C/O memory problems since age six. Mother says extremely forgetful and has difficulties caring for own basic needs such as cooking and driving and unable to hold a job. No present psychiatric treatment or hospitalizations for psychiatric problems. Last work was at auto dealer doing detailing on cars for five years. Overall health is good. Mother stated MVA accidents in 1992 and 1995 may be related to his memory problems. Claimant denies current or past drug/alcohol use. Has been incarcerated once.

OBSERVATIONS: Interacted appropriately with our staff, on time with his mother for appointment, ambulatory with fluid movements, was positive, friendly, responsive, reserved, cooperative, responses were reality based, normal motor activity, low self esteem, expressed good insight into his condition, expressive language skills, responses were spontaneous, clear, on target, of moderate depth and no display of circumstantial or tangential tendencies. Denied hallucinations, delusions or suicidal ideation.

Appetite normal but sleep habits poor. Appropriate affect but overall mood is sad and extremely frustrated by his condition. Orientated times 3. Some limitations in memory and information, unable to do calculations, limited abstract thinking. Similarities/Differences/Judgment with better responses.

DIAGNOSIS: Axis I Cognitive Disorder. Depressive disorder. Severe memory impairment. No previous records for review. Able to manage own benefit funds. [REDACTED]. DE 1, pp. 5-8.

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 at the time of the hearing. 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 to support a finding that the Claimant has mental limitations which are more than minimal and which impact his abilities to perform 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 mental 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 a diagnosis of cognitive disorder or depressive disorder by [REDACTED] opined mental limitations in memory and sustained concentrations. See finding of facts 8-9. But the Claimant testified at hearing that Aricept had been prescribed but he was not taking the medication.

Appendix 1 of Subpart P of 20 CFR, Part 404. Listing 12.04, *Affective Disorders* and 12.02 *Cognitive Disorders* are relevant to the medical records. After reviewing the criteria of the listings, the undersigned finds the Claimant's medical records do not substantiate that the Claimant's mental impairment meets the intent or severity of listing requirements 12.04 or 12.02. The Claimant was found orientated times 3 by [REDACTED]; and the details of [REDACTED] observations support mental function. See finding of fact 9 for the description of the Claimant's function at the evaluation.

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 car washing and auto detailing. The record supports the Claimant was fired from several positions for failing to appear work. The claimant testified to not being able to arise in the morning for work. But the Claimant testified this occurred both before and after the MVAs. There were no medical records establishing physical dysfunctions. The undersigned finds the Claimant can return to past work washing cars. But arguendo, the Claimant is still not disabled under step five.

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. The Claimant alleged learning disabilities but Department Exhibit 1, pages 13-18 declare the Claimant understood and answered the questions

himself. Thus the Claimant has not proven reading or writing deficits. 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 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 201.24, for younger individual, age 18 to 49; education: limited or less—at least literate and able to communicate in English; previous work experience, unskilled or none; the Claimant is “not disabled” per Rule 201.24.

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 evidence to support a finding that Claimant's impairments meet the disability requirements under SSI disability standards, and prevents other work 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 program and the State Disability 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: March 5, 2009

Date Mailed: March 9, 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/jlg

cc:

