

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.: 2008-15480
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
September 24, 2008
Wayne County DHS (58)

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 September 24, 2008. The Claimant and his representative appeared at the Department of Human Service (Department) in Wayne County, District 58.

The record was left open to obtain additional medical information. Claimant waived the closure date on the record. The medical information was submitted to the State Hearing Review Team (SHRT) 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) retroactive MA-P for the month of June 2007 and State Disability Assistance (SDA) 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 July 9, 2007 the Claimant applied for MA-P and SDA; an application in December 2006 was denied.
- (2) On November 9, 2007 the Department denied the application; and on November 19, 2008 the SHRT, guided by Vocational Rule 204.00, denied the application finding the medical records indicated a capacity to perform simple, unskilled work; and cited the materiality of substance abuse per PL 104-121.
- (3) On January 29, 2008 the Claimant filed a timely hearing request to protest the department's determination.
- (4) Claimant's date of birth is May 9, 1969; and the Claimant is thirty-nine years of age.
- (5) Claimant completed grade 11; and can read and write English and perform basic math. Department Exhibit (DE) pp. 122-125.
- (6) Claimant last worked in 2000 doing odd jobs like yard work, car washing; presently was making door mats five hours a day, four days a week and earning \$80 per month for [REDACTED] where he gets work/room /board; and records provide a history of acting, health instructor , general construction and fast food restaurants. DE 1, p. 109.
- (7) Claimant has alleged a medical history of hallucinations in [REDACTED], bipolar disorder, anxiety attacks, flat feet/fallen arches, left eye blindness.
- (8) [REDACTED], in part:

PSYCHIATRIC EVALUATION: MENTAL STATUS: HT: 65-66", WT: 199. Came in van from [REDACTED] and on time. Reports living in shelter for one year. Prior was at detox. Childhood was OK. Was one semester short of graduating 12th

grade with GPA 3.15. Seeing [REDACTED] for bipolar disorder for one year. Prescribed Klonopin, Benzotropine, Geodon, Wellbutrin, Lamictal and multi-vitamins. Medications are kept by staff at shelter. Very confused about hospitalizations in past. Denies past problems with drugs/alcohol. But admitted was in detox for drinking 40-60 ounces beer daily. Age 11 started drinking.

Was odd and distant and guarded with examiner. Past interests were acting, writing and stage manager. Presently plays keyboard and watches movies. Independent in ADLs, cooking, cleaning, managing money and taking the bus.

MENTAL STATUS: grooming appropriate, facial expression bland. Gait and hand/eye coordination intact. Fine motor skills intact. Speech clear, in contact with reality, self-esteem appropriate, decreased motivation, possesses modest insight. Often seemed he was not putting forth effort to remember information. Reports seeing shadow people every day but unable to elaborate. Denies suicidal attempts. Reports being anti-social. Memory poor.

Based on today's interview, lack of other medical reports and without medication bottles, the claimant did not appear to be putting forth full effort in remembering, providing accurate information or giving honest answers. Not capable of managing benefits funds. [REDACTED]; [REDACTED], [REDACTED], Licensed Psychologist.

INDEPENDENT MEDICAL EXAMINATION: Physical Examination: BP 120/80, Vision: right 20/100, left unable, both 20/70 without glasses. General appearance, HEENT, Heart/Lungs, Abdomen, Skin, Neurological, Musculoskeletal: [All within normal limits.] Except: poorly groomed, excoriation left nostril, slightly decreased flexion of back. [REDACTED]. Internist. DE 1, pp. 6-18

(9) [REDACTED], in part:

[REDACTED]: Ophthalmology Examination: Best corrected visual acuity both eyes is 20/30. Fundi are normal except cup-to-disk ratio. 95 degrees of field vision right; and 107 degrees field vision left. He would benefit from reading glasses/bifocals. [REDACTED]. DE 1, pp. 2-4.

[REDACTED]: Currently resides at [REDACTED] shelter for 2 years. Complains of persecutory auditory hallucinations. Spends most time in his room watching TV or visiting parents. Complains

depression has escalated and hygiene poor, low energy, suicidal ideation and poor concentration. Reports sober from drugs/alcohol for “over a year.” He is calm, cooperative, friendly and prescribed Clonazepam, cogentin, geodon, lamictal, wellbutrin. He is requesting to be seen for medication only and only wants to see psychiatrist yearly not bi-monthly.

Needs continued outpatient treatment and would benefit from increased therapy and case management services. Needs to continue to comply with treatment/medications and attend medications reviews as recommended. [REDACTED]

[REDACTED]. Claimant Exhibit. 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, Claimant testified to current SGA making floor mats and earning \$80 plus room/board for [REDACTED]. This does not disqualify the Claimant 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 sufficient medical evidence to support a finding that Claimant has mental limitations on his abilities to perform basic work activities. See finding of facts 8 to 9. The medical evidence has established that Claimant has mental impairments that have more than a minimal effect on basic work activities; and Claimant's impairments have lasted continuously for over twelve months.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's physical 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 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.

The Claimant has medical records evaluating his mental status since [REDACTED]. There were no medical records establishing any physical impairment such as loss of physical function of the upper and lower extremities or loss of eyesight.

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 12.00C. *Mental Disorder; Assessment of severity*.

We measure severity according to the functional limitations imposed by your medically determinable mental impairment(s). We assess functional limitations using the activities of daily living; social functioning; concentration, persistence, or pace; and episodes of de-compensation. Where we use "marked" as a standard for measuring the degree of limitation, it means more than

moderate but less than extreme. A marked limitation may arise when several activities or functions are impaired, or even when only one is impaired, as long as the degree of limitation is such as to interfere seriously with your ability to function independently, appropriately, effectively, and on a sustained basis.

In reviewing the medical records the undersigned finds the Claimant's mental impairment does not meet the level of severity required by the listings. The Claimant has been staying at [REDACTED] [REDACTED] reportedly for 2 years. The Claimant was prescribed medications; and was in outpatient treatment with [REDACTED]; and worked for some money/room/board. This is functioning for the Claimant; as evidenced by the fact that he continues to voluntarily stay in this environment for two years. This is appropriate, effective and on a sustained basis. At hearing, a relapse to drinking alcohol was reported.

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 impairments do not meet the intent and severity of the listings. 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 basically odd jobs of painting, yard work car wash. But this type of past work has not been performed for a long time. Present work was part-time and used upper extremities and hands while sitting. The undersigned finds the Claimant cannot 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 thirty-nine 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 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 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: 04/14/09

Date Mailed: 04/14/09

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:

[Redacted CC list]