

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.: 2008-19491

Issue No.: 2009, 4031

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

August 18, 2008

Chippewa 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 August 18, 2008. The Claimant appeared at the Department of Human Service (Department) in Chippewa County.

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) and retroactive MA-P for the months of November and December 2007 and January 2008 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 February 28, 2008 the Claimant applied for MA-P and SDA.
- (2) On April 28, 2008 the Department denied the application; and on March 13, 2009 the SHRT, guided by Vocational Rule 204.00, denied the application finding the medical records indicated a capacity to perform unskilled work.
- (3) On May 1, 2008 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-five years of age.
- (5) Claimant completed grade 12; one year of college; and can read and write English and perform basic math.
- (6) Claimant last worked in 2004; and quit as a waiter/restaurant server for 10 years and worked at the casino for 7 years with more experience at a grocery store.
- (7) Claimant has alleged a medical history of substance abuse problems since age 18 with last use in [REDACTED], obsessive/compulsive disorder, anxiety, panic attacks and inability to leave his home (agoraphobia).
- (8) [REDACTED], in part:

DISCHARGE SUMMARY: Treatment began in [REDACTED] but ended. Then began again with outpatient sessions [REDACTED], attended 3 or 4 scheduled appointments. States has no control over drinking. Refused offer to enter detox then residential treatment. Recognizes he has a drinking problem but believes he does not have the ability to change things. [REDACTED]. Department Exhibit (DE) 1, pp. 6-18 and 49-62.
- (9) [REDACTED], in part:

██████████ has been a patient of the substance abuse program since ██████████ DE 2, p. 1.

██████████ ER to detox. Chronic ETOH. Past history of GERD.

PHYSICAL EXAMINATION: [All systems within normal limits.] Blood testing results: HIV 2 and 2-negative. Hepatitis B, C and A—negative ██████████. DE N, pp. 1-4.

██████████ PSYCHIATRIC EVALUATION: History: Severe alcoholic for several years. Currently sober for 30 days; and in substance abuse treatment. Biggest concern is anxiety he uses alcohol to cover but when not drinking, he does not leave home. Several years of outpatient and residential treatment since age 18 but not successful. There are no medical issues. Currently taking Librium. Had some suicide attempts, threatening to jump from bridge, cutting wrists, overdose usually was intoxicated. Denies suicidal ideation presently. He is no risk to others.

MENTAL STATUS EXAM: Orientation, Appearance, Motor Activity, Speech, Thought Process, Thought Content, Mood, Affect, Insight/Judgment: [all within normal limits.] Except agitated, restless motor activity, increased sleeping and eating habits. Diagnosis: Axis I: Alcohol Dependence; Anxiety Disorder 9(With panic and agoraphobia). ██████████ DE N2, pp. 1-4.

██████████ States has been sober for 90 days except drank in ██████████ half of fifth vodka.

Anxiety is chief concern and unable to work or go to big stores like Walmart and causes panic. Current medications: Paxil, Campral, Protonix, Reglan, Vistaril, Buspar.

DIAGNOSES: Axis I: Anxiety Disorder; with panic attack with mild agoraphobia however, given close proximation of cessation of drinking, I am reluctant to diagnose until a period of months elapse to clearly see Axis I psychopathology. Alcohol Dependence: in early remission. Axis IV: appears to be average to above average intelligence with suboptimal performance. Prognosis is guarded. To assess medications one month. ██████████. Claimant Exhibit pp. 1-4

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 2004. 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 establishing substance abuse problems; and symptoms of anxiety and agoraphobia. These symptoms support a finding that Claimant has limitations on his abilities to perform basic work activities. There were no medical records of physical impairments that prevent basic work activities. See finding of facts 8 to 9.

The medical evidence has established that Claimant has limitations that 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 1 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 establishing severe alcohol abuse for several years. [REDACTED] [REDACTED] opined that Axis I psychopathology mental diagnoses could not be made until several months of sobriety had elapsed. See finding of fact 9. Under Appendix I, Listing of Impairments alcoholism is not impairment.

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 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 as waiter for several years. At hearing the Claimant testified to being unable to return because of inability to take orders at a table due to getting sweaty, shaky and hot. That was in 2004 when he last worked. There were no physical limitations on the Claimant's physical functional ability. The undersigned finds the Claimant cannot return to past relevant work based on the Claimant's testimony. Sequential 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 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 findings, and hearing record that Claimant's RFC for work activities on a regular and continuing basis is functionally limited to light work or heavy work under 204.00. Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines 20 CFR 416.969:

202.00 Maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s). (a) The functional capacity to perform a full range of light work includes the functional capacity to perform sedentary as well as light work. Approximately 1,600 separate sedentary and light unskilled occupations can be identified in eight broad occupational categories, each occupation representing numerous jobs in the national economy. These jobs can be performed after a short

demonstration or within 30 days, and do not require special skills or experience.

(b) The functional capacity to perform a wide or full range of light work represents substantial work capability compatible with making a work adjustment to substantial numbers of unskilled jobs and, thus, generally provides sufficient occupational mobility even for severely impaired individuals who are not of advanced age and have sufficient educational competences for unskilled work.

Claimant at forty-five is considered *a younger individual*; a category of individuals age 18-49. Under Appendix 2 to Subpart P: Table No. 1—Residual Functional Capacity: Maximum Sustained Work Capability Limited to Light Work as a Result of Severe Medically Determinable Impairment(s), Rule 202.21, for younger individual age, age 18-49; education: high school graduate or more; previous work experience, skilled or semi-skilled—skills not transferable; the Claimant is “not disabled” per Rule 202.21.

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 light 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: 04/10/09

Date Mailed: 04/13/09

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.

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