

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.: 2008-22249
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
September 17, 2008
Oakland County DHS (4)

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 17, 2008. The Claimant's representative appeared at the Department of Human Service (Department) in Oakland County. The Claimant did not appear.

The record was left open to obtain additional medical information. 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 (MA-P) and retroactive MA-P back to July 2006 and State Disability Assistance 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) The Claimant filed an application for MA-P and SDA on October 26, 2006, which was denied by the Michigan Review Team.
- (2) On February 9, 2009 the SHRT denied the application finding non-compliance with prescribed treatment; and a non-severe impairment per 20 CFR 416.920(C).
- (3) The Claimant filed a hearing request.
- (4) Claimant's date of birth is [REDACTED], and the Claimant was twenty-eight years of age at the time of the application in 2006.
- (5) Claimant has alleged a medical history of several hospitalizations for ketoacidosis due to non-compliance with diabetic treatment.
- (6) [REDACTED], in part:

[REDACTED]: Admitted for diabetic ketoacidosis. States has not been taking insulin for several weeks and eating ice cream and cake and chocolate. Treated medically. He knows that he has to take insulin and follow diet. No overt evidence of mental disorder. He wishes to be discharged against medical advice (AMA). He is competent to make this decision. [REDACTED]. Department Exhibit (DE) pp. 47-96.

[REDACTED]: HISTORY: Insulin Dependent diabetes mellitus. (IDDM)

CURRENT DIAGNOSIS: IDDM.

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

FINDINGS: dental abscess.

CLINICAL IMPRESSION: Improving.

PHYSICAL LIMITATIONS: No physical or mental limitations. Can meet own need at home. Medications: insulin, antibiotic. [REDACTED]. [REDACTED]. DE 1, pp. 23-24

[REDACTED]: Called to see patient. He is requesting to leave and is aware that treatment has not fully completed and he needs to be

monitored for another 24 hours [re diabetic ketoacidosis secondary to non-compliance.] Threatening to take out IVs and walk out. He is alert, orientated and competent to make decisions. Will D/C. Patient will sign out AMA. [REDACTED]. DE 1, pp. 3-18.

(7) [REDACTED], in part:

[REDACTED]: Vomiting for two hours. History of DM non-compliant. Smokes cigarettes, marijuana and drinks alcohol. All systems negative. Alert and orientated times 3. Abdominal series negative. Insulin drip done. Wants to go home. Metabolic acidosis. D/C. [REDACTED] Claimant Exhibit (CE) pp. 2-21.

[REDACTED]: Does not see doctor to manage diabetes. Not checked blood sugar in 3 weeks. And has polydipsia and polyuria for several weeks. Admitted for diabetic ketoacidosis. Symptoms resolved and deemed stable for discharge. Appointment with [REDACTED] and to follow insulin dosing, do Accu-checks. Discharged in stable condition. [REDACTED]. CE pp. 22-25.

[REDACTED]: Admitted for diabetic ketoacidosis. Poorly compliant. Normal abdominal series. Chest X-ray negative. Has had greater than 10 admissions for diabetic ketoacidosis. Medically treated. Stable at discharge. Advised to follow with diabetic regimen. [REDACTED] DE 1, pp. 107-117

[REDACTED]: Admitted for diabetic ketoacidosis. States ran out of insulin. Has not seen doctor for one and on-half years. Patient is looking for work at auto shops. Motor activity smooth and coordinated. Orientated and memory intact. Denies psychotic symptoms. Poor history of compliance with treatment recommendations. Medically treated. Physical examination within normal limits. DIAGNOSIS: Uncontrolled diabetes mellitus. Chest X-ray negative. Drug abuse. Anemia. Will sign out AMA. [REDACTED] CE, pp. 27-71.

(8) [REDACTED], in part:

To hospital accompanied by police officers. C/O facial swelling and pain for two days. Alert and orientated times 3. Physical Examination: [Within normal limits.] Except right side tooth decay. Had incision and drainage of first molar abscess. Feeling better and was discharged home. Unrestricted activity level. Diabetic diet and to follow with PCD and dentist. Stable at discharge. [REDACTED]. CE pp. 127-128.

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, there was no evidence of a work history. 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 of numerous hospitalizations for diabetic ketoacidosis and non-compliance with treatment since [REDACTED]. The medical evidence has established that Claimant has a physical impairment that is more than minimal and

affects basic work activity. There was no medical evidence of mental impairments affecting basic work activity. See finding of fact 6-9.

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 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.

The Claimant was diagnosed with diabetic ketoacidosis due to non-compliance with treatment. There were no medical records establishing physical function limitations. See finding of facts 6-9. 20 CFR 416.930 discusses the need to follow prescribed treatment. 20 CFR 416.930 provides:

(a) What treatment you must follow. In order to get benefits, you must follow treatment prescribed by your physician if this treatment can restore your ability to work, or, if you are a child, if the treatment can reduce your functional limitations so that they are no longer marked and severe.

(b) When you do not follow prescribed treatment. If you do not follow the prescribed treatment without a good reason, we will not find you disabled or blind or, if you are already receiving benefits, we will stop paying you benefits.

(c) Acceptable reasons for failure to follow prescribed treatment. We will consider your physical, mental, educational, and linguistic limitations (including any lack of facility with the English language) when determining if you have an acceptable reason for failure to follow prescribed treatment. The following are examples of a good reason for not following treatment:

- (1) The specific medical treatment is contrary to the established teaching and tenets of your religion.
- (2) The prescribed treatment would be cataract surgery for one eye when there is an impairment of the other eye resulting in a

- severe loss of vision and is not subject to improvement through treatment.
- (3) Surgery was previously performed with unsuccessful results and the same surgery is again being recommended for the same impairment.
 - (4) The treatment because of its enormity (e.g. open heart surgery), unusual nature (e.g., organ transplant), or other reason is very risky for you; or
 - (5) The treatment involves amputation of an extremity, or a major part of an extremity.

In this matter, medical records did not evidence any of the reasons set out above for the Claimant to fail to follow prescribed treatment. In this case, for the reasons set out above, 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 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.

Here, the medical findings were normal for all body systems except ketoacidosis due to non-compliance with recommended medical treatment. The medical records indicated the Claimant was ambulatory and had full use of both upper and lower extremities, but there was no evidence of past work history.

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 twenty-eight 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 [Medical records

were evidence of ability 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 requirements under SSI disability standards, and prevent return to past relevant 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 State Medical 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: 04/17/09

Date Mailed: 04/20/09

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:

