

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Claimant

Reg. No.: 2008-22689

Issue No.: 2009, 4031

Case No.:

Load No.:

Hearing Date:

September 18, 2008

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

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 based on disability (MA-P) program 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) The Claimant filed an application for MA-P and SDA on March 26, 2008.
- (2) On May 22, 2008 the Department denied the application; and on December 9, 2008 the SHRT guided by Vocational Rule 204.00 denied the application because medical records did not support a physical or mental impairment that prevent unskilled work; and citing the materiality of substance abuse.
- (3) On June 4, 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; and can read and write English and perform basic math.
- (6) Claimant last worked in 1995 in general labor and has had many years of incarceration.
- (7) Claimant has alleged a medical history of insulin dependent diabetes mellitus for 20 years, neuropathy of right and left legs, hands and feet, right and left hand arthritis, depression for up to 13 years.
- (8) February to March 2008, in part:

[REDACTED]: Parole scheduled March 3, 2008. Diagnoses: Diabetes Mellitus, uncomplicated. Hypertension, Essential. No assistive devices or prosthetics, Diabetic diet 2400 ADA. No abnormal mental health history notes. 20 year history of smoking three-quarter packs per day. Has not had good sugar control in years. Non-compliant with diet and exercise. Better on glucophage. BS 200. BP 105/76, WT: 172, HT: 68". General appearance, Eyes, Cardiopulmonary, Cardiovascular System, Behavioral Assessment, Abdomen, speech, orientations: [All within normal limits.] [REDACTED], [REDACTED]. Department Exhibit (DE) 1, pp. 10-188.

- (9) May, August and September 2008, in part:

May: PSYCHOLOGICAL EVALUATION: History: States has been depressed since release from prison in March 2008. Denies suicidal or intent. Denied depression before prison release. Currently receives outpatient treatment in [REDACTED]. Stated

used cocaine, marijuana and alcohol all his life. "Dropped dirty" for cocaine few weeks ago and used cocaine few times since release. Responses to the:

Beck Depression Inventory showed evidence of severe depression characterized by severe sadness, feelings of failure, guilt, feeling of punishment, self-disgust, severe self blame, mild suicidal ideation, some irritability, loss of interest in others, difficulty concentrating, severe sleep disturbance, fatigue, decrease in appetite, worry about physical problems, and feelings of hopelessness.

DIAGNOSTIC IMPRESSIONS: Axis I: Adjustment disorder, Acute, With Depressed Mood. Alcohol dependence, Cannabis dependence both possibly in early remission. Cocaine Abuse. Not capable of managing own benefit funds. [REDACTED]

[REDACTED]. DE N, pp. 3-6.

May: MEDICAL EVALUATION: States actively using cocaine and not drinking excessively. Lives in shelter. Medications:

[REDACTED]

PHYSICAL EXAMINATION: Vital Signs: 68 1/2", WT: 171, BP 135/83. Limited effort on Jamar but right 38 left 20. HEENT, Neck, Chest, Abdomen, Heart, Abdomen, Musculoskeletal, Range of Motion All joints, Neurological: [All within normal limits.] Except scabs to left knee from falling off his bike; and decreased sensation of tib/fib area and dorsum of feet. Gait slow but not antalgic.

Insulin dependent diabetes but poorly controlled. BUN and creatinine are within normal limits. Elevated SGOT but denies history of hepatitis B or C. No definitive functional loss from stroke type event. History of osteoarthritis of hands but could perform finger to finger apposition. Grip is less than optimum. States suffers from depression but no current treatment. To see PCP in two weeks. [REDACTED]

[REDACTED]. DE N, pp. 7-9

August: One week F/U of right calf abscess. Temperature normal. Feels much better, area much smaller. DE N, pp. 2-32.

September: Currently being treated at [REDACTED]. He has uncontrolled Type 2 diabetes mellitus which is requiring newer forms of insulin. He has diabetic neuropathy causing pain in

extremities; and recovering from large abscess of left thigh.
[REDACTED]

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 working since approximately 1995. 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 sufficient medical evidence to support physical/mental limitations that have more than a minimal effect on basic work activities; but

only the physical impairment has lasted 12 months. There were no medical records up to March 2008 from the [REDACTED] indicating any treatment for depression.

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 physical impairment is "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 9.08A: *Diabetes Mellitus* with neuropathy demonstrated by significant and persistent disorganization of motor function in two extremities resulting in sustained disturbance of gross and dexterous movements or gait. This criterion was not reflected in the medical records. There were no medical records establishing acidosis or retinitis proliferans. Even though the Claimant has neuropathy, he has not lost functional use of his upper or lower extremities. There are medical records indicating an injury bicycle riding.

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/her 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 evidence supports uncontrolled diabetes mellitus. The medical records note the Claimant has failed to follow prescribed treatment for many years. But the last work the Claimant was general labor and that was several years ago. Thus, the undersigned will not return the Claimant to past 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 forty-five is considered a *younger individual*; a category of individuals age 45-49. 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 201.18, for younger individual, age 45-49; 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 201.18.

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 medical evidence to support a finding that Claimant’s impairments meet the disability requirements under SSI disability standards, and prevents other

work activities 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 State Disability 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: 05/01/09

Date Mailed: 05/01/09

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:

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