

[REDACTED]

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.: 2008-22804
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
August 28, 2008
Wayne County DHS (35)

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 28, 2008 at the Department of Human Service (Department) in Wayne County. The Claimant appeared.

The closing date was waived. Additional medical records were obtained and reviewed by the State Hearing Review Team (SHRT). SHRT denied the application. The 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) 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 February 4, 2008 the Claimant applied for MA-P and SDA.
- (2) On May 19, 2008 the Department denied disability; and on March 9, 2009 the SHRT denied the application citing 20 CFR 416.920(c), lack of severity; and 20 CFR 416.935 significance of drug and alcohol abuse.
- (3) On June 6, 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 fifty-five years of age.
- (5) Claimant completed grade 11 and a GED; and legibly signed, as self-completed, DHR-49-G. Department Exhibit (DE) 1, pp. 29-32.
- (6) Claimant last worked in 2006 at telemarketing for six months; and self-described as "street hustling."
- (7) Claimant has alleged a medical history of decreased concentration and hearing voices; depression, right hand arthritis, low back pain due to an injury and headaches with a history of IV heroin use with two years sobriety.
- (8) August 2007, in part:

Psychiatric Evaluation: HISTORY: States no attention deficit symptoms, no pain complaints, no manic symptoms, no sexual dysfunction, and no thought disorder. States has continued to use substances on a relapse and reports non-compliant with medications. Treated as outpatient for substance abuse issues and several rehab efforts over the years. Multiple past suicide attempts. Denies past medical history. Past employment as telemarketer.

MENTAL STATUS EXAM: Patient demonstrated good grooming, timeliness, orientations times four, sadness, good eye contact, suspicious appearance, normal speech, impaired judgment. Logical and coherent thought process, paranoid delusions, command auditory hallucinations. No obsessive/compulsive thought, average intelligence and fair insight. No current suicidal risk or no homicidal thought risks. Receptive to advice.

Axis I: Major depression disorder, Recurrent, Severe with psychotic features. Current psychotropic drugs: [REDACTED]. Return one month. [REDACTED] 1, pp. 18-22.

(9) April 2008, in part:

HISTORY: Has been in mental outpatient treatment with [REDACTED] since August 2007; and has an appointment later today. C/O hearing voices and talking to himself. Takes [REDACTED] and [REDACTED]. C/O not being able to hold objects with hands, pain in low back and migraine headache. History of heroin use with last use one to one and a half years ago. Total time of incarceration has been 14 years for bank robbery and parole violations. Not on parole now.

Independent in ADLS, home chores and ability to take bus to locations. States gets along well with mother, likes to be alone and quiet.

Description of Mental Status: Presented as being questionable in contact with reality, accurate historian, answered questions in logical, goal-directed fashion for most part but with some psychotic ideation. Hears voices telling him to hurt himself or others but has not acted on them. Feels people are plotting against him. Feels he has magical posers and receives secret messages from TV.

Orientated times 2, decreased memory, decreased information, decreased calculation skills, decrease in abstract thinking, decrease in judgment. Axis I: Probable schizoaffective disorder. Opiate addiction with reported remission. Axis II: Mixed personality disorder with antisocial and paranoid features. Guarded prognosis in light of cognitive and emotional difficulties. In light of these difficulties; and history of substance abuse, he is not felt capable of managing his own benefit funds. [REDACTED] DE 1, pp. 6-11.

(10) July 2008 and October 2008, in part:

July: 40 year heroin dependency. Attended methadone program from January 2005 through February 2006. Discharged today, July 23, 2008, from [REDACTED] of the [REDACTED]. He is set up with [REDACTED] and will take the bus to see his [REDACTED]

therapist/psychiatrist; and attend daily meetings with other clients to maintain sobriety [REDACTED]

October: X-ray right hand: IMPRESSION: mild degenerative changes.

X-ray left hand: IMPRESSION: degenerative changes without fracture. [REDACTED]. DE N, pp. 1-3.

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 2006. 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 to support a finding that Claimant has mental limitations on his abilities to perform basic work activities. See finding of facts 8-10. The medical evidence has established that Claimant has a mental impairment that has more than a minimal effect on basic work activities; and lasting more than 12 months. 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 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.

Appendix I of Subpart P of 20 CFR, Part 404, and Listing of Impairments (Listing) discusses the analysis and criteria necessary to a finding of a listed impairment. In this matter, the medical records establish mental impairments and bilateral degenerative changes of the hands. There were no medical records that established loss of function of either right or left hands, except by the Claimant's statements that he drops things.

Appendix 1 of Subpart P of 20 CFR, Part 404. 12.00 *Mental Disorders*. Listing 12.03; 12.04 12.8 and 12.09 were reviewed. After reviewing the criteria of the listings, the undersigned finds the Claimant does not meet the listing requirements. 12.00C *Assessment of Severity* provides a measurement of the symptoms in the claimant's medical records.

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. See finding of facts 8-10.

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 lacked the necessary listing level criteria and severity. 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 telemarketing. But this type of work was for a short time period. There were no other valid or legal work experiences. The Claimant testified he cannot return to this type of past relevant work due to the inability to concentrate. The undersigned accepts this testimony; and decides 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 medium work. Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines 20 CFR 416.962(a):

- 203.00 *Maximum sustained work capability limited to medium work as a result of severe medically determinable impairment(s).*
- (a) The functional capacity to perform medium work includes the functional capacity to perform sedentary, light, and medium work. Approximately 2,500 separate sedentary, light, and medium occupations can be identified, each occupation representing numerous jobs in the national economy which do not require skills or previous experience and which can be performed after a short demonstration or within 30 days.
 - (b) The functional capacity to perform medium work represents such substantial work capability at even the unskilled level that a finding of disabled is ordinarily not warranted in cases where a severely impaired individual retains the functional capacity to perform medium work. Even the adversity of advanced age (55 or over) and a work history of unskilled work may be offset by the substantial work capability represented by the functional capacity to perform medium work.

Claimant at fifty-five is considered *advanced age*; a category of individuals age 55 and over. Under Appendix 2 to Subpart P: Table No. 1—Residual Functional Capacity: Maximum Sustained Work Capability Limited to medium work as a Result of Severe Medically Determinable Impairment(s), Rule 203.10, for individuals of *advanced age*, over 55; education: limited or less [Testimony of reading impairment: unconfirmed]; previous work experience, none; the Claimant is “disabled” per Rule 203.10.

It is the finding of the undersigned, based upon the medical data and hearing record that Claimant is “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 sufficient evidence to support a finding that Claimant’s impairments meet the disability requirements under SSI disability standards, and prevent other medium employment for ninety days. This Administrative Law Judge finds the Claimant is “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 “disabled” for purposes of the Medical Assistance program and the State Disability Program.

It is ORDERED; the Department’s determination in this matter is REVERSED.

Accordingly, The Department is ORDERED to initiate a review of the February 2008 application to determine if all other non-medical eligibility criteria are met. The Department shall inform Claimant of its determination in writing. Assuming Claimant is otherwise eligible for program benefits, the Department shall review Claimant’s continued eligibility for program benefits in March 2010.

The [REDACTED] consultant in conjunction with the Medical Review Team is to consider the appropriateness of ORDERING the Claimant into mandatory mental health treatment and substance abuse counseling.

Further, a referral is to be made to [REDACTED] to consider benefit fund management on behalf of the Claimant; and other actions as necessary.

/s/

Judith Ralston Ellison
Administrative Law Judge
For Ishmael Ahmed, Director
Department of Human Services

Date Signed: [REDACTED] _

Date Mailed: [REDACTED]

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

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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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