

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.: 2008-23373

Issue No.: 2009, 4031

Case No.: ██████████

Load No.: ██████████

Hearing Date:

August 18, 2008

Oakland District (3)

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 and her friend ██████████ appeared at the Department of Human Service (Department) in Oakland County.

The record was left open to obtain additional medical information; and additional medical evidence was reviewed by the State Hearing Review Team (SHRT); and the application was denied. The matter is now before the undersigned for a final decision.

ISSUE

Whether the Department properly determined the Claimant was "not disabled" for purposes of Medical Assistance based on disability (MA-P), retroactive MA-P for the months of January, February and March 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 April 24, 2008 the Claimant applied for MA-P and SDA.
- (2) On May 20, 2008 the Department denied the application; on December 11, 2008 the SHRT denied the application finding the medical records indicated a non-severe impairment and cited the materiality of drug and alcohol abuse per 20 CFR 416.920(c).
- (3) On June 11, 2008 the Claimant filed a timely hearing request to protest the Department's determination.
- (4) Claimant's date of birth is [REDACTED]; and Claimant is forty years of age.
- (5) Claimant completed grade 11; and can read and write English and perform basic math.
- (6) Claimant was last employed 2007 with work in fast food restaurants, [REDACTED] cashier and was a photo tech.
- (7) Claimant has alleged a medical history of seizures, asthma, hypoglycemia, headaches, back and neck pain and untreated depression.
- (8) [REDACTED], in part:

INDEPENDENT MEDICAL EXAMINATION: Complaining of seizures. First was in [REDACTED] and had loss of consciousness without aura, fell on ground and had shakes without tongue biting, or incontinence of urine or stool. Was hospitalized for two days. CT, MRI, EEG were negative. Prescribed Dilantin; and takes Augmentin, Synthroid.

Neurological System: Cooperative, orientated times 3, no memory loss. Cerebella functions, gait, heels/toes walking, Romberg, finger-to-finger: [Within normal limits.] Higher cerebral cortical functions: speech, understanding, cranial nerves: [Within normal limits.] No localized muscle wasting, twitching, atrophy, paralysis or involuntary movements. Pinprick, light touch, temperature and

vibrations senses were intact. Normal deep tendon reflexes, knee jerks and ankle jerks. Babinski test negative.

HT 64-65", WT 170, BP 130/80, and Visual Acuity: best corrected 20/34 right, 20/34 left.

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

CLINICAL IMPRESSION: Stable.

PHYSICAL LIMITATIONS: Limitations expected to last 90 days or over. Lifting/carrying up to 25 pounds 2/3 of 8-hour day; and 50 1/3 of 8-hour day; stand and/or walk about 6 hours in 8 hour day; sit about 6 hours in 8 hour day; no assistive devices are needed; use of both hand/arms for simple grasping, reaching, pushing/pulling, fine manipulating; use of both feet/legs for operating controls. Can meet own need in home. Limited in sustained concentration. [REDACTED]. Department Exhibit (DE) 1, pp. 3-8 and 2-22.

(9) [REDACTED], in part:

FINAL IMPRESSION/DIAGNOSIS: Acute alcohol intoxication. Acute seizures with history of seizure disorder. HISTORY: To ER for seizure today and had one here. Recently seen here for seizures and started on Dilantin. She stated she does not like to take Dilantin and throws it up. But she did drink alcohol today. History of drinking heavily. PHYSICAL EXAMINATION: [Within normal limits.] Except unable to fully assess focal deficits. Explained to her/fiancé that seizures were likely related to alcohol intake; and she needs to stop drinking. Given Phenobarbital and prescription for. Discharged to follow with [REDACTED]. DE N, pp. 1-5.

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 400.10, *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 CFR 416.905

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) The Claimant testified that to not performing SGA since 2007. Therefore, the Claimant is not eliminated from MA-P at step one; further review of the claim is necessary.

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 treatment for a seizure disorder; and this limitation is more than minimal and effects basic work activities. The medical evidence has established that Claimant has limitations that have more than a minimal effect on basic work activities from April 2008 to May 2008. At hearing in August 2008, the Claimant testified to seizures in [REDACTED] but there were no medical records submitted. See finding of facts 8-9

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.

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 functional limitations according to Listing 11.00 *Neurological System*. The Claimant does not meet this listing There were no medical records that established continuing seizures when anti-convulsive medication levels were adequate or when the Claimant was not drinking alcohol.

Claimant is not presently disabled at the third step for purposes of the Medical Assistance (MA) program due to the lack of medical records, lack of intent 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 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 Claimant's last work was fast food restaurant and as cashier at other retail establishments. The Claimant testified to not being able to return to past relevant work; which the undersigned accepts and decides the Claimant cannot return to past relevant work based on the testimony.

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 is considered a *younger individual*; a category of individuals age 18 to 44. 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 44; education: limited or less—at least 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 requirements under SSI disability standards, and prevent other sedentary 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 Disability Assistance programs.

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.

JRE/jlg

cc:

