

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. 2008-26451
Issue No. 2009; 4031
Case No: [REDACTED]
Load No. [REDACTED]
Hearing Date:
November 5, 2008

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 November 5, 2008. The Claimant and his friend [REDACTED] appeared at the Department of Human Services (Department) in Genesee 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 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 May 19, 2008; and first filed a disability application in 2004; which was denied.

(2) On June 17, 2008 the Department denied the application; and on January 4, 2009 the SHRT guided by Vocational Rule 202.20 denied the application finding the medical records evidenced a capacity to perform a wide range of light work.

(3) On July 22, 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 thirty-nine years of age.

(5) Claimant can understand and respond to spoken English; and is able to read the newspaper, perform addition and subtraction basic math; and legibly write in answer to application questions. DHS-49F.

(6) Claimant last worked in [REDACTED] at a recycling center sorting plastic for two weeks; and had a paper route but has been incarcerated off and on since age 14; and released in [REDACTED].

(7) Claimant has alleged a medical history of back pain, depression with bipolar disorder, hypertension, learning disabilities and history of abscesses of buttocks resolved.

(8) [REDACTED], in part:

MRI lumbar spine: IMPRESSION: Degenerative changes at L4-L5 and L5-S1 with left parasagittal disc protrusion at L5-S1 mildly impinging on left S1 nerve root at it exits thecal sac. Epidural fat within the spinal canal contributes to narrowing of thecal sac of these levels and a mild degree of thecal sac narrowing based on measurements. [REDACTED]. Department Exhibit (DE) N, pp. 1-2.

Psychological Evaluation: Experiencing symptoms of depression and anxiety. Prison term for selling drugs. Denies suicidal/homicidal ideations. Treatment Plan to 2009: Psychiatric Consultation and Individual Therapy. DIAGNOSES: Axis I:

Depressive disorder, NOS. Borderline Intellectual functioning.
Anti-social personality disorder. [REDACTED].
DE N, PP. 10-20.

(9) [REDACTED], in part:

CURRENT DIAGNOSIS: Hypertension, Degenerative Joint disease, L5-S1 disc herniation with impingement of S1.

BP 168/98 for which new medications started. HT 6'7" WT 300 pounds.

NORMAL EXAMINATION AREAS: HEENT; Respiratory; Cardiovascular, Abdominal, Neuro, Mental. Trouble walking secondary to pain.

FINDINGS: Musculoskeletal: lumbar spinal tenderness, SLP positive.

CLINICAL IMPRESSION: Stable.

PHYSICAL LIMITATIONS: Limitations expected to last over 90 days. Lifting/carrying 10 pounds 2/3 of 8 hour day; 20 pounds 1/3 of 8 hour day; never 25 or over; stand and/or walk at least 2 hours in 8 hour day; no assistive devices are needed; use of both hand/arms for simple grasping, reaching, pushing/pulling and fine manipulating; use of both feet/legs for operating controls. Can meet own needs in home. MENTAL LIMITATIONS: None.

Medications: HCTZ, Procardia, Vicodin, Naprosyn. [REDACTED]

[REDACTED] DE N, pp. 8-9

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 that he had not performed SGA since [REDACTED]. Therefore, Claimant is not disqualified from 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 supporting a finding of mental/physical impairments. The medical evidence has established that Claimant has an impairment that has more than a minimal effect on basic work activities; and Claimant’s impairments have lasted continuously for twelve months and are expected to last. See Finding of Facts 8 and 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 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, Listing of Impairments (Listing) discusses the analysis and criteria necessary to a finding of a listed impairment. The undersigned reviewed the listings and found the following relevant to the Claimant's symptoms/diagnoses. Listing 1.04 *Disorders of the spine*; Listing 5.00 *Cardiovascular System for Hypertension* and 12.04 *Affective Disorders* were reviewed

The Claimant does not meet the intent or severity of these listing because the Claimant was ambulatory with normal functioning of the upper and lower extremities. The Claimant is under treatment with pain medication from [REDACTED]; and symptoms of a cause for pain were established by MRI. But the doctor did not limit the use of the Claimant's use of the upper and lower extremities. See Finding of Fact 9.

There was evidence of hypertension, elevated blood pressure in the medical records and anti-hypertensive medication was prescribed. The medical records do not document end organ damage to the brain, heart, eyes or kidneys from elevated blood pressure. The Claimant testified to taking anti-hypertensive medications but the undersigned is amazed at the blood pressure readings at stated compliance.

[REDACTED] diagnosed depression and a treatment plan was developed with [REDACTED]. The plan appeared to address the depression and treatment.

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 findings evidence the mental/physical impairments. The Claimant's past relevant work was sorting plastic at a recycling center and a paper route. Incarceration interrupted the early establishment of work but the Claimant was reported to have a history of selling drugs. Because of the lack of work history, the undersigned finds it necessary to proceed to evaluation under the fifth step.

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 functional capacity," defined simply as "what can you still do despite you 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 limitations.

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 by impairments to sedentary work because of the physical functional capacity opinion of [REDACTED]. The Claimant alleged learning disability; and school records were submitted. Other evidence was used to decide the Claimant could perform sedentary work. See Finding of Fact 5.

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 thirty-nine is considered *younger individual*; a category of individuals age 18-44. 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 201.23, for individuals, age 18-44; 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 201.23.

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 prevents other sedentary work activities 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 retroactive 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: February 17, 2009

Date Mailed: February 20, 2009

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.

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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

cc:

