

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.: 2008-26947

Issue No.: 2009

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

October 22, 2008

Macomb County DHS (20)

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, the Claimant and his representative appeared at a hearing held on October 22, 2008 at the Department of Human Service (Department) in Macomb County.

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 retroactive MA-P for the months of June and July 2007 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 August 10, 2007 the Claimant applied for MA-P.
- (2) On September 4, 2007 the Department denied the application; and on January 7, 2009 the SHRT guided by vocational Rule 202.20 denied the application finding the impairment retained the capacity to perform light work and citing the materiality of drug and alcohol abuse per 20 CFR 416.435.
- (3) On November 5, 2007 the Claimant filed a timely hearing request protesting the determination of the Department.
- (4) Claimant's date of birth is December 8, 1964; and the Claimant is forty-four years of age.
- (5) Claimant completed grade 11 and GED; and currently enrolled in college four days a week; and can read and write English and perform basic math.
- (6) Claimant last worked in 2005 performing dry wall hanging for 15 years.
- (7) Claimant has alleged a medical history of congestive heart failure with chest pain, dizziness on exertion on performing cardio-fitness exercises, shortness of breath, sleep apnea with CPAP oxygen use, obesity, hypertension and untreated depression and history of treatment for alcohol abuse with three months sobriety.
- (8) [REDACTED], in part:

[REDACTED]: Admitted for chest pain and shortness of breath starting three weeks ago. With history of not seeing any doctors for may years and morbidly obese. Newly diagnosed medical problems include high blood pressure, cellulites of lower extremities, chronic obstructive pulmonary disease (COPD) and hypoxia. Sleep apnea, congestive heart failure and abnormal liver function studies, fatty liver and alcohol abuse.

Discharge plans include providing free medicines, outpatient follow up and advised to loose weight, not drink alcohol and avoid smoking cigarettes. Discharge medications: Ecotrin, Pepcid, Keflex, Cardizem. Albuterol, Atrovert and Advair. To follow with endocrinologist, pulmonologist, cardiologist and [REDACTED] for abnormal liver function. [REDACTED].

█: Left Ventricular ejection fraction 55%. CXR: Conclusion: Increased vascularity with cardiomegaly and increased density over the abdomen, consistent with ascites fluid. No improvement since █. Discharged home after 14 days of treatment for acute exacerbation of COPD with respiratory failure in stable condition. To see family doctor as scheduled, refrain from alcohol, tobacco and illicit drugs. Placed on various inhalers and therapies. To use BIPAP every night and oxygen. To refrain from all alcohol and cocaine products or any illicit drugs. Department Exhibit 3, pp. 1-48.

(9) █, in part:

September: PSYCHIATRIC CONSULT: Admitted for overdose of medications and drank alcohol in suicide attempt. Living with fiancé and her children and have been arguing/fighting. Medical History: obesity and overdose. States drinks alcohol daily up to pint whiskey a day and on weekends drinks more. Denies drugs. No reported psychotic or manic symptoms. States has been attending community college for last two years to earn law enforcement degree. MENTAL STATUS: moderately obese, fair eye contact, decreased reaction, Mood depressed, affect constricted. Alert and orientated times three. No psychotic symptoms. Concentration poor, insight, judgment is limited. Talks about wanting to kill self. Start CIWA for alcohol use, 1:1 supervision, Ativan and Haldol. When stabilized, transfer to inpatient psychiatric. █.

CONSULTATION: BP 180/92, 96% room oxygen, HEENT, Lungs, Heart, Abdomen, Extremities: [All within normal limits.] Some blood serum abnormalities in electrolytes. DIAGNOSIS: Benedryl overdose, alcoholism, Hypertension, electrolyte imbalance. █.

October: Pulmonary Function Test results: Best value: FVC 3.70; FEV1 1.69. Ht: 69"

█: █: New Patient: Negative for health care for several years. DX with Hypertension and COPD. BP 142/80. Medications: lisinopril, Illegible, Atenolol, start Spiriva, Blood testing results: abnormal RDW, Sodium, Gamma GT. Schedule other testing. Claimant Exhibit [Pages unnumbered.]

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 SGA. 20 CFR 416.920(b). In this case, under the first step, Claimant testified to not performing SGA since 2005. But the claimant testified to attending classes four days a week. Without more information, the 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 (6th Cir 1985)

In this case, the Claimant has presented sufficient medical evidence to support a finding that Claimant has more than minimal physical/mental limitations that would affect abilities to perform basic work activities more than minimally. See finding of fact 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 does 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.

There were no medical records submitted after [REDACTED] until [REDACTED]. The medical records submitted indicate opinions of medical professionals that the Claimant has substance abuse issues. The undersigned evaluated the symptomology evidenced by the medical records under 20 CFR 416.935. A determination is required of whether drug addiction or alcoholism is a contributing factor material to the determination of disability through the factors of 20 CFR 416.935(a) through (2) (ii). The key factor we will examine in determining whether drug addiction or alcoholism is a contributing factor material to the determination of disability is whether we would still find you disabled if you stopped using drugs or alcohol.

There were no medical records establishing the Claimant's substance abuse problems caused the impairments. See finding of fact 8-9. But the Claimant did not follow prescribed medical treatment. Alcohol was used against medical advice. There were no medical records that the Claimant followed up with the specialists as prescribed in [REDACTED] and the Claimant resumed smoking cigarettes. 20 CFR 416.930 discusses the need to follow prescribed treatment.

(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.

There were none of the good cause reasons for the Claimant's failure to follow prescribed treatment in the submitted medical records. See finding of facts 8-9.

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 [REDACTED] medical findings were essentially normal for all body systems except at hearing the Claimant testified to respiratory problems. But according to the results of the pulmonary function test the Claimant did not meet the listing level impairment of 3.02. See finding of fact 9.

The Claimant testified to the act of driving which can be information regarding a normal use of both upper and lower extremities and ability to see, hear and concentrate on traffic. There were insufficient medical records to follow up the [REDACTED] psychiatric admission. In [REDACTED] only a diagnosis was given and the [REDACTED] medical records were very sparse. The Claimant did testify to not being able to return to hanging dry wall. The undersigned accepts this testimony due to the breathing problems and does not return the Claimant 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 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-three 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 201.28, for younger individual, age 18 to 49; education: high school graduate or more; previous work experience, skilled or semi-skilled, skills not transferable; the Claimant is “not disabled” per Rule 201.28.

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 disability requirements under SSI disability standards or prevent other sedentary work 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 based on disability 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: 04/24/09

Date Mailed: 04/24/09

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

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