

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.: 2008-27284
Issue No.: 2009, 4031
Case No.: ██████████
Load No.: ██████████
Hearing Date:
November 10, 2008
Wayne 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 August 11, 2008. The Claimant and his sister, ██████████ appeared at the Department of Human Service (Department) in Wayne County.

New medical records were requested by Interim Order; and reviewed by the State Hearing Review Team (SHRT). The application was denied; and this matter is before the undersigned for final decision.

ISSUE

Whether the Department properly determined the Claimant was "not disabled" for purposes of Medical Assistance based on disability (MA-P) 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 June 3, 2008 the Claimant applied for MA-P and SDA.
- (2) On July 17, 2008 the Department denied the application; on March 13, 2009 the SHRT guided by Vocational Rule 202.17 denied the application finding the medical records indicated a non-severe impairment/condition and citing the materiality of substance abuse per 20 CFR 416.920(c).
- (3) On July 31, 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 a GED; and can read and write English a little in a newspaper and perform basic math by counting coins. Department Exhibit (DE) 1, p. 3.
- (6) Claimant was last employed in 2003 working in a restaurant and in constructions, as dishwasher, busboy, measuring wood and using a screw gun.
- (7) Claimant has alleged a medical history of life time mental problems beginning in childhood, hearing voices, paranoia, non-compliance with medications, violent behavior; and an episode of frostbite to feet with peeling skin and a smell which occurred when living out doors.
- (8) [REDACTED] in part:

Psychiatric Evaluation: HISTORY: No complaints of medications side effects. Medications are beneficial and he states out of medications for one month. Prior treatment in therapy with medications and hospitalization. No reported suicide attempts.

Substance abuse includes crack cocaine, alcohol and marijuana reaching level of dependence. Less than one week since last use. Longest period of abstinence was one to two months.

Strengths include adequate family support system, adequate education, family involvement and good physical health. Risk factors include non-compliance, chronic mental illness, and financial problems.

Positives: Good grooming, timeliness, good eye contact, no delusional thought, no obsessive-compulsive thought, average intelligence, normal speech, logical and coherent thought process, good insight, no psychosis event, calm behavior and social smile. No suicidal or homicidal thought, plan or ideation.

Negatives: disorientations to person, euthymic mood. Axis I: Major depressive disorder, Recurrent, Severe with psychotic Features; and Polysubstance Dependence. Medications: Zyprexa, Lexapro, Zyprexa.

Understanding/Memory: Moderately to markedly limited.
Sustained Concentration/Persistence: Moderately to markedly limited
Social Interaction: Moderately to markedly limited
Adaption: Moderately to markedly limited. [REDACTED], [REDACTED]. DE 1, PP. 7-11.

(9) [REDACTED] in part:

To ER in custody of [REDACTED], complaining of needing his psychiatric medications. Denies suicidal and homicidal ideation; and visual or auditory hallucinations. No other complaints including chest pain or shortness of breath. Smokes cigarettes, drinks alcohol denies other drugs.

PHYSICAL EXAMINATION: [All systems are within normal limits.] Given re-file of Zyprexa and Lexapro for three days and to follow with own doctor. Released back into custody of police. [REDACTED] DE B, pp. 1-3.

(10) [REDACTED], in part:

INDEPENDENT PSYCHIATRIC EVALUATION: History: Poor historian and no medical records were sent. States hearing voices for ten years. Does not get along with others and gets mad easily. Cannot sleep well. Seeing psychiatrist at [REDACTED] and

taking Zyprexa and Lexapro. Admitted drinking 2-3 40 oz beers per day and using crack cocaine at \$20.00 per day for over 10 years. In rehab programs a few times. He stated he is not sure if substance abuse was causing hallucinations and depression. C/O back pain and problems with ambulation. Has four children. Lives with his sister, has few friends and does not get along with others. Appeared irritable. Does light chores, goes to church and watches TV most of the time. Posture and gait were normal, hygiene and grooming good and on time for appointment, able to care for his basic needs. No eye contact.

Mood irritable and affect blunted. Mental Capacity: alert, orientated, able to repeat numbers forward and backward, able to recall zero of three objects. Unable to do serial calculations but simple math was correct. Abstract thinking [Near normal.] Unable to perform similarities and differences. Judgement [Adequate.] DIAGNOSIS: Axis I: Schizo-affective disorder, Alcohol dependence; Polysubstance abuse; R/O substance abuse mood disorder. Able to handle benefit funds [REDACTED]. DE A, pp. 1-3.

INDEPENDENT MEDICAL EXAMINATION: C/O pain affecting lower back, both feet and knees. Takes Advil for pain. Does not use a cane.

PHYSICAL EXAMINATION: Alert, orientated. Vital signs, vision, Gait, HEENT, Chest, Cardiovascular, Abdomen, Bones & Joints, Nervous System: [All within normal limits.] Except Some restriction of lower back movements and knee movements. Feet have bunions and calluses for which he needs surgery [REDACTED]. DE B, pp. 4-7.

X-rays right and left foot: needs repeat x-rays. View limited and unable to be diagnostic.
Right knee: narrowing of joint space. No fracture, dislocation, blastic or lytic changes.
Left knee: Narrowing of joint space. No fracture, dislocation, blastic or lytic changes.
Lumbar spine: Grossly: segments are intact but follow up suggested. [REDACTED]. DE B, 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 400.10, *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) It is the finding of the undersigned, based upon the testimony, that the Claimant had not performed SGA since 2003; and not eliminated at step one from a finding of disability; 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 some lower extremity impairments and a mental impairment that would impact performance in basic work activities. The medical evidence has established that Claimant has impairments that has more than a minimal effect on basic work activities; and according to the medical records, Claimant’s mental impairment has lasted continuously for over 12 months. See finding of fact 8-10.

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 12.00 *Mental Disorder*; and Listing 1.00. Listing 12.00C *Mental Disorder; Assessment of severity* was reviewed.

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.

The medical records reflect a substance abuse problem which is not impairment under Appendix 1 of Subpart P of 20 CFR, Part 404. The Claimant told [REDACTED] that he was not sure if the abuse of substances is causation for his mental dysfunction. But the undersigned notes the Claimant is taking anti-psychotic medications and is still abusing substances that are an impact

on his mental function. The Claimant should stop using substances and find out if he can function.

Listing 1.00 requirements are met when there is a severe loss of function. There were no severe limitations of the Claimant's upper or lower extremities in the medical records.

In this case; and based on a lack of medical records establishing mental limitations with loss of function and physical limitations with loss of function, 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 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 were normal for all body systems except the mental impairments and minor physical limitations of restriction of motion. The records indicated the Claimant was completely ambulatory. There were no medical records which limited the physical or mental functioning on the Claimant's ability to do work, except by [REDACTED]. See finding of fact 8. As previously noted the Claimant acknowledges continuous substance abuse and does not know if this abuse affects his mental functions.

The Claimant's past work was in 2003 in restaurant type work and construction type work. The undersigned finds the Claimant has the mental and physical ability to return to past relevant work. But arguendo, the Claimant is "not disabled" under step five either.

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 mental and 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 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 201.24, for younger individual, age 18 to 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 201.24.

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 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.

