

[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.: 2008-29281
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
November 24, 2008
Kent County DHS (00)

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 appeared at a hearing held on November 24, 2008 at the Department of Human Service (Department) in Kent 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 month of April 2008 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 May 23, 2008 the Claimant applied for MA-P and SDA; and SDA was granted but MA-P was denied.
- (2) On July 18, 2008 the Department denied the application; and on March 12, 2009 the SHRT denied the application finding the impairment non-severe and citing the materiality of drug and alcohol abuse per 20 CFR 416.435.
- (3) On August 15, 2008 the Claimant filed a timely hearing request protesting the determination of the Department.
- (4) Claimant's date of birth is [REDACTED] and the Claimant is forty-seven years of age.
- (5) Claimant completed grade 12; and two years of college; and can read and write English and perform basic math.
- (6) Claimant last worked in 2007 performing carpentry, customer service for [REDACTED] and others.
- (7) Claimant has alleged a medical history of remission/relapse of herpes sores in the mouth, arms, legs and stomach; untreated schizophrenia, swollen right and left arms and legs.
- (8) January, February, and April 2008, in part:

[REDACTED]

January: C/O shortness of breath. Chest X-ray: no significant cardiopulmonary abnormality.

February: Herpes Simplex Virus 1 and 2: negative. Negative result does not R/O HVS.

February: Presents with oral ulcers since January with difficulty eating. States has had lesions on arms, primarily resolved except one on right elbow. Cervical lymphadenopathy present at submandibular and cervical nodes. Oral musosa is red with exudates on tongue. Lips dry and irritated and cracked. Hyperpigmented macules left arm and right arm some healing. Appears chronic and will continue antibiotics and mouth swish. F/U 5-10 days.

April: Sores much better helped by mouth rinse and [REDACTED]. Needs dermatologist consult. Multiple ulcerations on lips, gingival and along buccal chain positive for exudates on pharynx and hyper pigmented area posterior arms. [REDACTED] Department Exhibit (DE) 1, pp. 51-58.

(9) April and May 2008, in part:

April: To ER C/O intermittent mouth sores for past 3-4 months with painful swallowing. States 20 pound weight loss in 3-4 months. Blood tests for hepatitis A, B, C were negative as was CBC and HIV. Physical Examination was basically normal except: thin, slightly cachetic and slightly disheveled. Diffuse white lesions on inner buccal musosa, soft and hard palate. Angular stomatitis and scabbed lesion vermilian border and otophranix markedly erythematous. No palpable lymphadenopathy. Multiple areas of hyper pigmented, circular, non-raised lesions through out bilateral upper extremities and lower extremities and anterior thorax.

Drug screen positive for benzodiazepines, cannaboids, cocaine and ETOH and he admits when confronted. Received BMX for pain relief and improved. Declined social work consult. Was informed that recurrent stomatitis likely secondary to ETOH abuse and needs to follow up with [REDACTED] in 1-2 days. Declined to be hospitalized here or at substance abuse treatment center. Discharged home. Given short supply of [REDACTED] n and oral suspension. [REDACTED] DE 1, pp. 14-21.

May: Admitted for C/O severe oral pain due to oral lesions which have been present since end of December 2007. States can no longer tolerate oral intake of food and has lost over 30 pounds in 2 months. Seen before without cause for lesions identified. States lesions becoming more painful and not resolving with prescribed treatment. Admits to past use of drugs but denies injection and smoking heroin but drinking daily for relief of pain. Was treated at [REDACTED] but not recently.

PHYSICAL EXAMINATION: BP 157/113. Awake, alert and oriented. HEENT, Neck, Heart, Lungs, Abdomen, GU, Musculoskeletal, Muscle tone, Neurologic: [Within normal limits.]

Except: appears uncomfortable, has left sided conjunctivitis, oral musosa inflamed with hemorrhagic ulcerations upper posterior palate along side of cheeks and gums, tongue inflamed with

whitish colored plaques on both superior/inferior surfaces. Lymphatics: Have shotty bilateral anterior/posterior cervical chain lymphadenopathy; and multiple coin-shaped scars upper and lower extremities bilaterally, mostly at elbows and knees. Has clear-filled bullous lesion left upper extremity. Denies trauma related to these lesions. These lesions are at locations not typical for injection of intravenous or subcutaneous substance abuse. All testing has been negative. Placed on [REDACTED] and had some improvement

DISCHARGE DIAGNOSES: Oral/skin lesions, herpes simplex I positive per biopsy. Hypertension. History of polysubstance abuse and history of paranoid schizophrenia. Discharge in stable condition. [REDACTED] DE 1, pp. 46-50

(10) November 2008 and January 2009, in part:

November 2008: Admitted for pain and redness over left leg for past week and oral pain. Diagnosed with erythema multiforme. Has been taking Valtrex and oral steroids and anti-hypertensive medication. Smokes and drinks daily. Denies drug use by injections.

PHYSICAL EXAMINATION: [Within normal limits.] Except skin: erythema left leg with skin blistering and skin tear anterior shin left leg; with surrounding broken hemorrhage. Some mild purulence from ulcer on anterior shin. Also blister right leg but does not appear infected. Head and Neck: Inflamed looking ulcerations on posterior palate and buccal cavity. No palpable lymphadenopathy. Musculoskeletal: mild left ankle swelling and left leg swelling. Non-tender. Will prescribe antibiotics.

[REDACTED] gets reoccurring itching/burning rashes and oral ulcerations triggered by herpes simplex virus in which most people would trigger cold sores but a few people triggers a more diffuse rash called erythema multiforma. I strongly suspect significant mental health issues in addition to substance abuse are complicating his care. [REDACTED] DE 1, pp. 60 and 63-68.

January: CURRENT DIAGNOSIS: HTN—not controlled; H/O cocaine and alcohol abuse. Recently hospitalized with MRSA infection of skin.

HT: 183CM [6'], WT 60.7 [130 pounds] KG, BP 155/92.
NORMAL EXAMINATION AREAS: General [thin]; HEENT;
Respiratory; Cardiovascular, Abdominal, Musculoskeletal, Neuro.
FINDINGS: Repeated requests for pain medication.

CLINICAL IMPRESSION: Improving.

PHYSICAL LIMITATIONS: No limitations except Mental: limited in sustained comprehension and social interaction. Strong suspicion of mental health issues. [REDACTED] 1, PP. 61-62.

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 2007. Therefore, 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 (6thCir 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 8-10.

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 supports 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 can be found to be disabled.

The medical records indicate opinions of medical professionals that the Claimant has mental health issues along with 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 episodic erythema multiforma was related to polysubstance abuse. See finding of fact 10.

Appendix I, Listing of Impairments (Listing) discusses the analysis and criteria necessary to a finding of a listed impairment. Listing 8.03 *Bullus disease* for example erythema multiforma. The severity and intent of the listing is met when it is established in the medical records; that despite continuing treatment for three months, the condition persists. The medical

records in this case have established the criteria of Listing 8.03. The undersigned finds the Claimant “disabled” at the third 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 or prevent other sedentary work 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 based on disability and State Disability Assistance programs.

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

Accordingly, The Department is ORDERED to initiate a review of the May 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 Medical Social Work 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 Adult Protective Services 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 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: [REDACTED]

