

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.: 2008-31029

Issue No.: 2009

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

December 10, 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, a hearing was held on December 10, 2008. The Claimant and her representative appeared at the Department of Human Service (Department) in Macomb County.

New medical records were requested by Interim Order; received 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 retroactive MA-P for the month of February 2008 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 March 7, 2008 the Claimant applied for MA-P.
- (2) On June 5, 2008 the Department denied the application; on March 19, 2009 the SHRT guided by Vocational Rule 203.28 denied the application finding the medical records indicated a capacity to perform other medium unskilled work.
- (3) On September 2, 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 thirty-six years of age.
- (5) Claimant completed grade 12; and can read and write English and perform basic math.
- (6) Claimant was last employed in 2005 at a satellite radio company, was an F&M supervisor/cashier/cart retriever and worked for [REDACTED]
- (7) Claimant has alleged a medical history of February 2008 hospitalization for a spider bite, now completely resolved but alleges asthma, anemia, electrolyte imbalance, bipolar disorder causing behavior problems, low back pain and ADD in school.
- (8) February 2008, in part:

Final Diagnosis: Right thigh abscess with cellulitis, improved.
Possible spider bite. HISTORY: With multiple allergies, asthma and history of bipolar disorder seen in ER. Admitted after outpatient antibiotic treatment failed. Has prior history of bipolar disorder, anemia and seeing psychiatrist regularly.

PHYSICAL EXAMINATION: HT: 65", WT: 250, BP 118/73.
Medications: Albuterol. General, HEENT, Neck, Chest, Heart, abdomen, Extremities, Neurological: [All within normal limits.]
Except: Morbidly obese, complaining of pain, 3cm indurated area mid right thigh with opening and mild skin necrosis.

Treated medically and cultures revealed MRSA and isolation instituted. Cellulitis improved dramatically with treatment. At time of discharge there was significant improvement and discharged in stable condition to follow with PCP and antibiotics. [REDACTED] Department Exhibit (DE) 1, pp. 19-25.

(9) January 2009, in part:

INDEPENDENT MEDICAL EXAMINATION: History: C/O Asthma, petit mal seizures and bipolar disorder. Using Advair and albuterol inhalers, no oxygen or nebulizer. States has had seizures since childhood Takes Trileptal and Depakote with some improvement; and started Depakote two weeks ago. Had MRI, CAT scan and EEG done but results were inconclusive. [Fell off bike August 18, 2008; and hit head; and had memory issues and petit mal seizures resumed after having stopped from childhood.] Stated had last seizure one month ago. Also takes Prozac, Desyrel and Xanax.

PHYSICAL EXAMINATION: Vital signs: WT 305, BP 107/67, Vision without glasses right 20/50, left 20/25. General, HEENT, Neck, Heart, Lungs, Abdomen, Musculoskeletal, Nervous System, Range of Motion in upper and lower extremities: [All within normal limits.] Except: morbidly obese, bilateral vesicular sounds lungs. [REDACTED] Internal Medicine. DE N, pp. 1-8 and Claimant Exhibit B, p. 5.

INDEPENDENT PSYCHIATRIC EXAMINATION: History: Alleges disability due to bipolar disorder and seizures. States seizures onset in 2007; and mild asthma. States history of problems controlling anger but denies suicidal and homicidal ideation and no depression or manic episodes. Describes typical day as visiting with friends and relatives, helping with chores, able to do dishes, own laundry, cook simple meals and independent in ADLs.

MENTAL STATUS: Neatly dressed, gait and posture normal, speech clear and at appropriate pace, good eye contact. Was forthright, matter of fact. There were some indications she was exaggerating her symptoms with statements to examiner. Logical, organized, affect dull, mildly agitated mood but without significant anxiety. Alert, orientated times 3, no disturbance of thought, memory, information, calculations, abstract thinking, similarities and differences, judgment: [Within normal limits.]

There was no clinical data or history to suggest cognitive impairments that would interfere with her ability to concentrate

and attend to simple routine manual labor tasks in a supervised work setting. Can manage own benefit funds. [REDACTED]

[REDACTED] Licensed Psychologist.

DE N, pp. 9-12 and Claimant Exhibit A, B, C

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 2005; 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 (6th Cir 1985)

In this case, the Claimant has presented medical evidence of treatment for cellulites in February 2008 which resolved. Then medical records indicated seizures with childhood onset, resumed after a head injury in August 2008. Medical records were submitted for treatment of bipolar disorder since 2006. But no medical records in February 2008 named any anti-psychotic medications being taken or any anti-epileptic medications being taken nor was there a medical history of seizures. But overall the medical evidence has established that Claimant now has impairments that have more than a minimal effect on basic work activities. 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 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's decision was based on functional limitations according to Listing 1.00 *Musculoskeletal System*; Listing 3.00 *Respiratory system*, Listing 11.00 *Neurological Disorders* and 12.00 *Mental Disorders*.

There was no medical evidence to establish that the Claimant has physical or mental loss of function under any of the above listings. [REDACTED] notes there was a tendency to exaggerate symptoms; and the undersigned after reviewing all the medical records found numerous misstatements by the Claimant to the medical examiners in the medical records, especially related to seizures. See finding of fact 8-9.

In this case; and based on a lack of medical records establishing severe limitations with loss of function of either physical or mental impairments, 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 near normal for all body systems. But the doctor's opinions differed to a great extent. There were no medical records which markedly limited the physical functioning on the Claimant's ability to do work. The Claimant's past work was fast food, cashier, supervision; and the undersigned finds the Claimant cannot return to these types of 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 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 due to asthma and morbid obesity. There was no evidence establishing functional limitations in schooling. 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-six is considered a *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 201.27, for younger individual, age 18-44; education: high school graduate; previous work experience, unskilled or none; the Claimant is “not disabled” per Rule 201.27.

It is the finding of the undersigned, based upon the medical data and hearing record that Claimant is “not disabled” at the fifth step.

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.

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: 04/08/09

Date Mailed: 04/09/09

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:

