

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: 2008-3853
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 19, 2008
Ontonagon County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted by Administrative Law Judge Jacqueline Hall-Keith by telephone conference on February 19, 2008 pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department. Judge Jacqueline Hall-Keith left State employment before the hearing decision was written. The undersigned Administrative Law Judge has written this hearing decision after review of evidence in the record including the recording of the actual hearing. At the hearing, the Claimant was present and testified. Claimant's mother and guardian, [REDACTED] was also present. [REDACTED] of [REDACTED] [REDACTED] was present and represented Claimant. [REDACTED] appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA") program.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material and substantial evidence on the whole record, finds as material fact:

1. Claimant filed for MA & SDA on July 9, 2007.
2. Claimant's impairments are depression, alcoholism, and social phobia.
3. Claimant testified that he has poor memory, poor concentration, and feelings of guilt, also that he gets nervous easily, has sleep disturbances, interrupted sleep, and has a general loss of interest in life.
4. Claimant is 6'5" tall and weighs 310 pounds. Claimant testified that he gained 115 lbs. in the year and a half prior to the hearing.
5. Claimant testified that he has no physical limitations.
6. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
7. Claimant is 47 years of age.
8. Claimant has three years of college education.
9. Claimant was last employed in May of 2006.
10. Claimant has employment experience as follows:
 - a) a machine operator – required standing
 - b) a loader/unloader in a window factory – lifting over 100 lbs.
 - c) rock scientist in a copper mine – checked the convergence, involved walking, bending and stooping.
11. Claimant testified that he performs household activities such as cooking, shopping (with his mom), doing dishes, laundry, mowing the grass and snow blowing.
12. Testimony revealed that Claimant is drinking approximately a six pack of beer per week. Claimant is no longer in charge of his finances and does not have the ability to obtain more alcohol.
13. The Department found that Claimant was not disabled and denied Claimant's application on 11/7/07.
14. Medical records examined are as follows:

- The ability to complete a normal workday and worksheet without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods.
- The ability to interact appropriately with the general public,
- The ability to ask simple questions or request assistance,
- The ability to accept instructions and respond appropriately to criticism from supervisors,
- The ability to get along with co-workers or peers without distracting them or exhibiting behavioral extremes.
- The ability to respond appropriately to change in the work setting,
- The ability to be aware of normal hazards and take appropriate precautions,
- The ability to travel in unfamiliar places or use public transportation,
- That ability to set realistic goals or make plans independently of others.

[REDACTED]
[REDACTED], 1/23/2007, in part, (Exhibit A, pp. 11-15).

CLINICAL SUMMARY: [REDACTED] is referred by his mother for concerns that he may have Bipolar Disorder. Although [REDACTED] is currently depressed, there is no evidence that he has ever had a manic or hypomanic episode. He is certainly an anxious man, both in his presentation, and in his history of social avoidance, and excessive worry about stressors. [REDACTED] has coped with anxiety by drinking for the past 25 years, and he has also been in relationships with females where has been taken care of. [REDACTED] appears to be an intelligent man, but his anxiety, depression and alcohol abuse have interfered with his life.

DIAGNOSTIC INFORMATION:

Major Depression, recurrent, moderate
Features of Dependent Personality Disorder
Alcohol Dependence

[REDACTED] in part, (Exhibit A, pp. 100-113)

Admission for detoxification

[REDACTED], in part (Exhibit A., pp. 163-167)

ASSESSMENT: 1) Hypotension secondary to dehydration vs. blood pressure medications. Recent changes in blood pressure medications compared with increased alcohol use probably contributing to hypotension. 2) Alcohol withdrawal.

[REDACTED] in part (Exhibit A, pp. 189-203)

Patient admitted with seizure precautions after presenting with shakes, nausea and chills after bingeing on alcohol for two weeks.

Discharged to rehab program.

RECOMMENDATIONS: The patient should be maintained on anti-depressant medication.

[REDACTED] in part (Exhibit A, pp. 210-226)

The patient was found to have acute alcohol intoxication with severe hypotension. The patient was admitted and given intravenous fluids.

[REDACTED], in part (Exhibit A, pp. 226-254)

FINAL DIAGNOSIS: 1) Dehydration and acute renal failure secondary to excessive alcohol intake and likely also ACE inhibitor therapy, 2) hypertension, 3) depression.

[REDACTED] in part, (Exhibit A, pp. 87-99)

Client has had multiple admissions to various hospitals in the area for detox in the last three years. His alcohol abuse and dependence started after his father committed suicide in 1997. Client is drinking on a daily basis. A 1. liter of rum will last him usually less than two days. He also uses Ephedrine. Client admitted for alcohol and amphetamine-like detoxification and dependence.

[REDACTED] in part, (Exhibit A, pp. 327-339)

SUMMARY OF DIAGNOSIS: 1) Ethanol and over-the-counter dependence and withdrawal.

[REDACTED] in part, (Exhibit A, pp. 293-319).

Admitted for alcohol dependence and detoxification.

PSYCHOLOGICAL TESTING REPORT DIAGNOSTIC IMPRESSIONS:

- 1) Alcohol dependence;
- 2) Mood disorder NOS (mixed anxious, depressive Sxs),
- 3) Personality disorder NOS with Schizoid traits. GAF 40

[REDACTED], in part (Exhibit A)

IMPRESSION: recent upper GI bleed/hematemesis in setting of acute chronic alcohol abuse.

[REDACTED], in part, (Exhibit A, pp. 285-292).

Admitted for alcohol dependence and detoxification.

[REDACTED] (Exhibit A, pp. 83-86)

Alcohol dependence treatment following inpatient detox and 10 days residential treatment.

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.

1. Current Substantial Gainful Activity

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). In this case, under the first step, the Claimant last worked in May of 2006. Therefore, the Claimant is not disqualified from receipt of disability benefits under Step 1.

2. Medically Determinable Impairment – 12 Months

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 F.2d 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 F.2d 860, 862 (6th Cir. 1988); *Farris v Sec’y of Health & Human Servs*, 773 F.2d 85, 90 (6th Cir. 1985).

In this case, Claimant’s most recent diagnosis is by a psychiatrist and includes: Major depressive Disorder – recurrent and severe, Severe Social Phobia and Agoraphobia, Cognitive Disorder NOS, and Avoidant Personality Disorder which are sufficiently severe to meet the intent of the regulations.

However, the medical records also establish alcohol abuse and amphetamine-like abuse. 20 CFR 416.935 requires a determination 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 evaluation used is as follows:

- (1) Determine which physical and mental limitations would remain if Claimant stopped using drugs or alcohol.
- (2) If remaining limitations would not be disabling, drug addiction or alcoholism is a contributing factor material to a determination of disability.
- (3) If remaining limitations are disabling independent of drug addiction or alcoholism, substance abuse is not a contributing factor material to a determination of disability.

Claimant has a long history of hospital admissions for alcohol intoxication, alcohol withdrawal and alcohol rehabilitation. It is clear that his presentation for hospital treatment has subsided since Claimant's mother became his guardian and limits his monetary ability to buy alcohol. However, Claimant remains clinically depressed and socially phobic even though he is not drinking substantially. As his treating psychologist stated in the [REDACTED] report, Claimant "has coped with anxiety by drinking for the past 25 years." Since the limitations from his depression and social phobia remain disabling, the alcohol addiction is not a contributing factor material to a determination of disability. Therefore, it is necessary to continue to evaluate the Claimant's impairments under step three.

3. Listed Impairment

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 a finding that the Claimant's physical and mental impairment are "listed impairment(s)" or equal to a listed impairment. 20 CFR 416.920(a) (4) (iii). Appendix I, Listing of Impairments discusses the analysis and criteria necessary to a finding of a listed impairment. The Listing 12.04 *Affective Disorders* was reviewed. 20 CFR 404 § 12.2 describes and Organic Mental Disorder as follows:

Affective Disorder: Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation.

The required level of severity for these disorders are met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

- A. Medically documented persistence, either continuous or intermittent, of one of the following:
 - 1. Depressive syndrome characterized by at least four of the following:
 - a. Anhedonia or pervasive loss of interest in almost all activities; or
 - b. Appetite disturbance with change in weight; or
 - c. Sleep disturbance; or
 - d. Psychomotor agitation or retardation; or
 - e. Decreased energy; or
 - f. Feelings of guilt or worthlessness; or
 - g. Difficulty concentrating or thinking; or
 - h. Thoughts of suicide; or
 - i. Hallucinations, delusions, or paranoid thinking,

AND

- B. Resulting in at least two of the following:
 - 1. Marked restriction of activities of daily living; or
 - 2. Marked difficulties in maintaining social functioning; or
 - 3. Marked difficulties in maintaining concentration, persistence, or pace; or
 - 4. Repeated episodes of decompensation, each of extended duration.

First, the record reveals that Claimant has exhibited sleep disturbances, difficulty concentrating, appetite disturbance with significant weight gain, and feelings of guilt or worthlessness. Claimant, therefore, satisfies the requirements of “A” for Depressive Syndrome.

Second, Claimant’s Depressive Syndrome has affected his ability to function. ■

■ noted that Claimant has “a long history of severe depression and anxiety resulting

in severe psychosocial difficulties since childhood including an inability to hold a job or maintain important social relationships. Furthermore, marked limitations were found in several areas as listed above, including Claimant's ability to maintain concentration, persistence and pace and his ability to work in close proximity to and get along with others or even interact appropriately with the general public thereby satisfying the listing requirements.

Therefore, the undersigned finds the Claimant's medical records substantiate that the Claimant's mental impairments meets or are medically equivalent to the listing requirements. In this case, this Administrative Law Judge finds the Claimant is presently disabled at the third step for purposes of the Medical Assistance (MA) program. As claimant is disabled, there is no need to evaluate Claimant with regards to the fourth or fifth steps.

In this case, there is sufficient evidence to support a finding that Claimant's impairment has disabled him under SSI disability standards. This Administrative Law Judge finds the Claimant is "disabled" for purposes of the MA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant is medically disabled under the MA program as of July 9, 2007.

Therefore the department is ORDERED to initiate a review of the application of July 9, 2007, if not done previously, to determine claimant's non-medical eligibility. The department shall inform the claimant of the determination in writing. The case shall be reviewed August 10, 2010.

/s/
Jeanne M. VanderHeide
Administrative Law Judge
for Jacqueline Hall-Keith

Date Signed: 3/27/09

Date Mailed: 3/31/09

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 mailing 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.

JV/dj

cc:

