

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. 2008-8606

Issue No. 2009; 4031

Case No:

Load No. ██████████

Hearing Date:

April 7, 2008

St. Clair 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 April 7, 2008. The Claimant appeared at the Department of Human Services (Department) in St. Clair County.

The record was left open to obtain possible new medical information from Social Security Administration (SSA). No new medical records were received; and the record closed. SSA granted SSI effective March 2008 on a January 2008 application. The matter of time periods July 2007 through February 2008 is now before the undersigned for final decision.

ISSUES

Whether the Department properly determined the Claimant is "not disabled" for purposes of Medical Assistance (MA) program and State Disability Assistance (SDA) 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) The Claimant applied for MA-P and SDA on July 23, 2007.
- (2) On September 17, 2007 the Department denied the application; and on February 25, 2008 the SHRT denied the application based on lack of severity.
- (3) On November 1, 2007 the Claimant filed a timely hearing request to protest the department's determination.
- (4) Claimant's date of birth is [REDACTED] and the Claimant is thirty-nine years of age.
- (5) Claimant completed grade 11 and a GED.
- (6) Claimant last worked in January 2004 operating machines; and was incarcerated from [REDACTED].
- (7) Claimant has a medical history of two MVAs, [REDACTED] lost left eye vision; and 1992 suffering skull fracture with closed head injury with headaches and memory loss, right eye injury and photophobia; and has not seen a doctor in several years.
- (8) [REDACTED], in part:

HISTORY: Blind in right eye due to head on collision in 1986; and cannot remember sequence of events. Problem with peripheral vision right eye and has fallen down steps and injured his teeth which appear to be dead. [REDACTED] was hit by a car and lost consciousness and does not remember and suffered a head trauma. C/O unrelieved headaches. Visual field is limited. Walks two miles a day without problem.

PHYSICAL EXAMINATION: HT 68", WT 195 pounds, BP 102/60. Vision without glasses right eye 20/20, left eye zero. HEENT, Neck, CVS, Chest, Abdomen, Skin, Extremities, Spine, Bones & Joints, Nervous system: [All within normal limits.]

Except on eye fundoscopic examination left side showed optic atrophy and on right side was normal but has absence of lower visual fields responsible for accidents and falling. Varicose veins on left leg and less on right leg. Limited in squatting. Absent right knee jerk probably nerve damage; and diminished intellectual capacity. [REDACTED] Department Exhibit 1, pp. 1-3

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 substantial gainful activity (SGA). 20 CFR 416.920(b). In this case, under the first step, the Claimant testified to not performing SGA since 2004. Therefore, Claimant is not disqualified for 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).

The medical evidence has established that Claimant has physical limitations that have more than a minimal effect on basic work activities; and Claimant's impairments have lasted continuously for over twelve months. See Findings of Fact 8. It is necessary to continue the evaluation under step three.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's physical impairments are listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Based on the hearing record, and the lack of medical records, the undersigned finds that the Claimant's medical record will not support findings that her 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. In this matter, the medical records establish visual defects in both right and left eyes. Appendix 1 of Subpart P of 20 CFR, Part 404; Listing 2.01 *Loss of visual acuity* is met if remaining vision in the better eye is 20/200 or less; and 2.03 discusses loss of peripheral vision.

The undersigned finds the Claimant does not meet the listing requirements because there were insufficient medical records to establish the criteria.

In this case, 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 Claimant 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. See 20 CFR 416.945.

Claimant's past relevant work was operating machines in 2004. But the record does support that due to the loss of the peripheral vision in his right eye; his vision is too poor for past relevant work. The undersigned finds the Claimant unable, due to both right and left vision defects, to perform any work at this time; and finds the Claimant is disabled at the fourth 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, and prevents other work for ninety days. This Administrative Law Judge finds the Claimant is presently "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 program and the State Disability Program.

It is ORDERED; the department's determination in this matter is REVERSED.

Accordingly, The Department is ORDERED to initiate a review of the July 2007 application to determine if all other non-medical eligibility criteria are met. The Department shall inform Claimant of its determination in writing.

/s/ _____
Judith Ralston Ellison
Administrative Law Judge
For Ishmael Ahmed, Director
Department of Human Services

Date Signed: February 13, 2009

Date Mailed: February 19, 2009

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.

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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

cc:

