

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.: 2008-16560
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
September 10, 2008
Ingham 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 September 10, 2008. The Claimant appeared at the Department of Human Service (Department) in Ingham County.

The record was left open to obtain additional medical information. New medical records were received and reviewed by the State Hearing Review Team (SHRT) and the application was denied. This 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) retroactive MA-P for the months of November, December and January 2008 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) The Claimant filed an application for MA-P and SDA on February 15, 2008.
- (2) On March 5, 2008 the Department denied the application; and on December 9, 2008 the SHRT denied the application finding a non-severe impairment per 20 CFR 416.820(C) and citing the materiality of alcohol and drug use.
- (3) On March 14, 2008 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 forty-three years of age.
- (5) Claimant completed grade 9; and can read and write English and perform basic math.
- (6) Claimant last worked in 2005 providing direct care for his uncle and full-time in 1998 as a security guard in the casino, did side jobs like landscaping.
- (7) Claimant has alleged a medical history of a MVA in 1998 leaving a head injury and anxiety, panic attacks, depression, back injury and chest pain in July 2008; and sober since January 2008 with daily AA meetings.
- (8) February 2008, in part:

HISTORY: Alcoholism.

CURRENT DIAGNOSIS: Hypertension, hyperlipidemia.

HT: 69", WT: 168, BP 118/84

NORMAL EXAMINATION AREAS: General; HEENT, Respiratory; Cardiovascular, Abdominal, Musculoskeletal, Neuro.

FINDINGS: anxiety.

CLINICAL IMPRESSION: Stable.

PHYSICAL LIMITATIONS: No physical limitations. Mental limitations in memory, sustained concentration and social interaction. Medications: Clonidine, Metrorlol, Thiamine, Floc Acod, Buspar, Lasix, Celexa. Bololol.

MEDICAL NEEDS: Ambulatory, needs assistance in personal self care. Alcoholism currently under treatment, not able to work. [REDACTED], MD. Internal Medicine. Department Exhibit (DE) 1. pp. 11-13

SUBSTANCE/PSYCHIATRIC EVALUATION:

Homeless for two years. Lived with uncle until uncle's death and then lived in own apartment paid with inheritance from uncle. Appears depressed and anxious, difficulty with remembering and concentrating; and restricted affect; and does not want to be homeless anymore. Reports suicidal ideation with plan to hang himself but says these plans are last resort.

Stated last use was [REDACTED] but reports of using pills and drinking in [REDACTED]. Living in ¾ house. Significant biomedical conditions with gout, numbness and frost bite to his feet, back disc, nerve pinch arthritis of knees and back and high blood pressure with tooth pain. Taking medications as prescribed by [REDACTED] and [REDACTED]. Risk for relapse and does not want to return to homeless centers. No supportive people in his life. Attending AA meetings. DIAGNOSIS: alcohol dependence syndrome. Generalized anxiety disorder. Panic disorder with Agoraphobia. Major depressive disorder, recurrent. Axis V: GAF 40. Outpatient treatment and case management. [REDACTED], MD, LLPC/[REDACTED], DE 3, pp. 1-16.

PHYSICIAN NOTES: Alert and orientated times 4, nicely dressed, good grooming/hygiene. Positive for moderate hand tremor, positive for motor agitation. Speech halting and stutter but clear. Affect anxious and dysphoric. Mood congruent, thought organized, hopeful, rational. Positive for passive suicidal ideation. Negative HI, DTs/Psychosis. Insight/judgment intact. [REDACTED] [Illegible] DO. DE 4, pp. 1-2

(9) June, July and August 2008, in part:

June: Called to say had alcohol relapse and will get into in-patient. Was refused state disability leaving him with no prospects for income. [REDACTED], MSW. DE 5, p. 19

July/August: Returns to treatment following relapse to alcohol in June. [REDACTED]. DE 5, pp. 29-32.

(10) 2008, in part:

MRI lumbar spine: IMPRESSION: Degenerative changes without central canal stenosis or abnormal cord signal. Disk bulging and small disk protrusion at L4-L5.

CT scan cervical spine: IMPRESSION: degenerative disease no acute trauma.

Myocardial Perfusion study: IMPRESSIONS: no significant perfusion defects or evidence of ischemia, normal wall motion.

Cardiovascular Stress test: IMPRESSION: normal.

Echocardiogram report: IMPRESSION: Mild left ventricular hypertrophy. LVEF 52%. Trace mitral valve regurgitation. Mild tricuspid valve regurgitation. Otherwise normal. CT head: IMPRESSION: negative.

Abdominal X-ray: IMPRESSION: no bowel obstructions. No kidney stones. No organomegally. Hip joints negative. Calcifications in pelvis are likely phleboliths.

CRT: impression: normal pelvis and right hip. DE 5, pp. 34-128.

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, Claimant testified to not performing SGA since 1998 but records indicate provision of home care for his uncle until 2005. 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)

In this case, the Claimant has presented medical evidence of physical and mental impairments. The medical evidence has established that Claimant has a physical/mental impairment that has more than a minimal effect on basic work activities.

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 physical and mental impairment 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 Listing 12.00 *Mental Disorders* and 1.00 *Musculoskeletal System*. Under Listing 12.00 alcohol dependence is not considered an impairment. Here the medical records indicated hospitalizations related to alcohol withdrawal and several recovery programs/attempts. Alcohol dependence produces abnormal behaviors and alcohol depresses the central nervous system and causes depressive

moods and poor behavior. Without a more significant period of abstinence from alcohol, the Claimant cannot be considered to meet Listing 12.00.

Under Appendix 1 of Subpart P of 20 CFR, Part 404, Listing 1.00 is met when there is a severe loss of function of the upper and lower extremities. [REDACTED] did not find the Claimant had physical impairments. See finding of facts 8-10

This Administrative Law Judge finds the Claimant is not presently disabled at the third step for purposes of the Medical Assistance (MA) program due to the lack of medical records establishing the intent and severity of the listings. 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/her 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 essentially normal for all body systems. The Claimant testified he cannot return to past relevant work as a security guard. The undersigned accepts this testimony and does not return the Claimant to 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 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-three 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 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.

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 and State Disability Assistance programs.

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: 04/20/09

Date Mailed: 04/20/09

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:

