

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.: 2008-17066

Issue No.: 2009

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

November 29, 2008

Wayne County DHS (57)

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 November 29, 2008. The Claimant and representative, [REDACTED] appeared at the Department of Human Service (Department) in Wayne County.

The record was left open to obtain additional medical information. The medical information was submitted to 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) program, and retroactive MA-P for August and September 2007 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 filed an application for MA-P on October 3, 2007.
- (2) On January 2, 2008 the Department denied the application; and on January 9, 2009 the SHRT denied the application because medical records indicated a capacity to perform unskilled work.
- (3) On March 24, 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 years of age.
- (5) Claimant completed grade 12 and college for culinary arts and CNA certified; and can read and write English and perform basic math.
- (6) Claimant last worked in December 2006 as a chef and was a caregiver for seven or more years.
- (7) Claimant has alleged a medical history of anxiety, depression, decreased memory, asthma with shortness of breath, and a suicide attempt/involuntary hospitalization in [REDACTED] [REDACTED] but has past history of alcoholism quitting in [REDACTED].
- (8) [REDACTED], in part:

[REDACTED]: PSYCHIATRIC DISCHARGE SUMMARY: Diagnoses: Depression, NOS; Personality disorder, passive aggressive.
PHYSICAL EXAMINATION: Chest, Lungs, Heart: [Within normal limits. Skin: rashes on chest wall and back. History of asthma, GERD, bronchitis.

Seen at [REDACTED] and noted alcohol abuse dependence but denied here then recant to say 2-3 beers a day; presented for wanting to jump off bridge. Started on routine orders with medications; and patient became cheerful, calm, euthymic, not agitated, no medication side effects, cheerful and pleasant on approach, superficial, not psychotic, not encephalopathic, no withdrawal symptoms. Discharged with medication Prozac to make appointments for psychiatric and substance treatment, in stable condition [REDACTED] [REDACTED]. Claimant Exhibit (DE) pp. 1-25

██████████: DISCHARGE SUMMARY: Diagnoses: Acute pancreatitis, ascites, cirrhosis of liver secondary to alcohol. Hypertension. Depression and anxiety. High history of drug abuse. Clostridium difficile colitis.

Was treated at free clinic for psychiatric and to ER C/O drinking to excess and abdominal pain. Hospitalized with acute pancreatitis. Physical Examination: [Within normal limits.] Except Abdomen with acute diffuse tender guarding right upper quadrant. Discharged home. Advised to quit alcohol, repeat blood tests and follow with PCP and psychiatrist. Stable. ██████████
Department Exhibit (DE) 1, pp. 12-206

(9) ██████████, in part:

██████████ Chief Complaint: asthma exacerbation. Past Medical History: Asthma, ETOH abuse, Depression/Anxiety, HTN, GERD.

Drinking two beers a week. Physical Examination: [Within normal limits.] Except mild expiratory wheeze, negative rhonchi. Chest X-ray: mild pulmonary hyperinflation consistent with asthma. Negative otherwise. Medically treated for asthma exacerbation, depression/anxiety, GERD, HTN. Social worker met with and provided with list of places to get medications/treatment. Plans to return to ██████████ upon discharge. Discharge and social worker provided her with Albuterol medications. Plans to follow with ██████████. Able to tolerate activity and symptoms improving without respiratory distress. 1800 ADA diet instructions. ██████████. Claimant Exhibit pp. 15-36.

██████████: Psychiatric Evaluation with review past medical records. History: Depressed for two years. Used to drink alcohol every day. Sober for two years and was in rehab program two times. Seeing psychiatrist at ██████████ and taking Seroquel, Celexa and Ativan with some improvement. Does do light chores and light cooking.

OBSERVATIONS: Gait, posture, hygiene and grooming normal. Some eye contact, on time for appointment, able to care for basic needs. MENTAL STATUS: Contact with reality, low self esteem, normal motor activity, some motivation and insight, speech spontaneous and logical, denies hallucinations, delusions and persecutory delusions, feels depressed, vague suicidal ideations off/on, poor sleep pattern, feels helpless, hopeless at times,. Mood irritable, affect appropriate. Alert and orientated times 3. Some memory, calculations and information problems. Abstract thinking

answered “I don’t know.” Judgment good. No plans for future.
Axis I: Major depression, Mood disorder due to medical problems.
Alcohol in partial remission. [REDACTED].

[REDACTED]: Mental Residual Functional Capacity: Moderate limit in understanding and remembering detailed instructions, ability to carry out detailed instructions, ability to perform activities on schedule and be punctual, ability to work with others without being distracted, ability to perform normal workday without being interrupted by psychologically based symptoms, ability to interact appropriately with general public, accept criticism and respond appropriately, get along with co-workers and adhere to socially appropriate behavior, travel in unfamiliar places and set realistic goals or plans independently. [REDACTED]

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. 20 CFR 416.920(b). In this case, under the first step, Claimant testified to not working since August 2007. 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 sufficient medical evidence to support some physical/mental limitations that have more than a minimal effect on basic work activities; and Claimant’s impairments are expected to last.

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 3.00 *Respiratory System*, and 12.00 *Mental Disorders*. There were no medical records establishing continuous symptoms of pancreatitis; and episodes of elevated blood pressure were due to failure to follow prescribed medical treatment in taking medications. See finding of fact 9.

There was no pulmonary function test result. In [REDACTED], the Claimant was hospitalized for acute asthma exacerbation; and improved with treatment at the hospital; and discharged on Albuterol on an as needed basis. There was no home oxygen or nebulizer treatment ordered for home use. See finding of fact 9. There were no other episodes of asthma exacerbation in medical records. Thus, Listing 3.04 was not met.

For Listing 12.00, the symptoms of 12.00C, loss of function are not consistently present in the medical records. There was evidence in [REDACTED] that made an inference regarding the Claimant's lack of continuance treatment and taking medications consistently. See finding of fact 9. Further, there was medical evidence of continuing alcohol consumption which the Claimant was advised to cease use of alcohol in [REDACTED]. See finding of facts 8-9.

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/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 except occasional respiratory problems, and depressive episodes. There was a physical limitation opinion in medical DHS-49 by signed by [REDACTED]; and these were related to lifting and use of upper and lower extremities. At hearing, the Claimant testified to not being able to return to past work as a chef due to lifting problems and a loss of confidence and memory. There was no medical evidence of severe memory problems but moderate limitations in some areas as opined by [REDACTED]. See finding of fact 9. Based on this evidence, the undersigned finds the Claimant cannot return to past work as a chef.

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 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 201.27, for younger individual, age 18 to 49; education: high school graduate or more; 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: 04/29/09

Date Mailed: 04/29/09

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

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