

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.: 2008-17840

Issue No.: 2009, 4031

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

August 25, 2008

Jackson 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 August 25, 2008. The Claimant appeared at the Department of Human Service (Department) in Jackson County.

The record was left open and the Claimant waived the closure date on the record. An Interim Order was issued to the Department to obtain additional consultations. No additional medical records were submitted. The record closed. 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) and State Disability Assistance Program (SDA)?

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 December 28, 2007.
- (2) On March 25, 2008 the Department denied the application; and on June 16, 2008 the SHRT denied eligibility finding the medical records indicated a non-severe impairment per 20 CFR 416.920(c).
- (3) On April 11, 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 fifty years of age.
- (5) Claimant completed grade 12 and two years of technical electronics and license with FTC; and can read and write English and perform basic math.
- (6) Claimant last worked in 2007 at a warehouse for one month, and in factories and eleven years as electronic technician; and helping his brother in remodeling and part-time temporary service type work in January 2007. Department Exhibit (DE) 1, p. 23
- (7) Claimant has alleged a medical history of chronic depression with insomnia, bipolar disorder with borderline psychotic and schizophrenic features, hi-lo moods with increased talking, a recent assault to head, looses temper often with suicidal and homicidal feelings. History of alcohol abuse with sobriety for sixteen years and attendance at AA meetings.
- (8) July and December 2007, in part:

July: Psychological Testing and Findings: Full scale IQ of 77 +/-.
Below average verbal reasoning skills and word knowledge, oral work problem skills, memory and memory span ability with

numbers and abstract reasoning. Exhibited flight of ideas, echolalia and over-ideational behaviors and confusion at times.

Occupational PICS Code profile was consistent with work activities in office work, computer applications, applied sciences and technology, production, manufacturing and retailing.

IQ was at odds with school records of high school transcripts with overall GPA of 3.5. Given this information there appears to be a significant decline in scores measuring cognitive function and greater than expected from age-related cognitive decline. Exhibits low insight, significant rote memory loss and odd manneristic behaviors with tangential ideas and diminished social insight, poor problem solving skills and simple tasks and low reading comprehension score. DIAGNOSTIC STATEMENTS: Axis I: Alcohol dependence, past history, in remission by client report. Depressive disorder, NOS. Rule Out: Alcohol Induced persisting dementia. [REDACTED]

DE 1, pp. 22-35

December 2007: Medication Review: Patient is about the same and continuously talks and does not listen well. He has been cashing his IRA and Mutual funds for money and money is running short having spent most paying off his truck, buying microwave, charity etc. Still does not sleep well. Appetite good and he has not lost his temper. Attending AA three days a week. Medications: switched to Navane and Zoloft. His case will be closed here and not a lot we can do for him, told to get prescriptions from PCP. Final diagnosis: Dependent personality disorder and borderline IQ. [REDACTED] Consulting Psychiatrist.

(9) January 2008, in part:

CURRENT DIAGNOSIS: Chronic depression, insomnia.

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

FINDINGS: Chronic depression and insomnia.

CLINICAL IMPRESSION: Stable.

PHYSICAL LIMITATIONS: No physical limitations in upper or lower extremities; and no mental limitations. Medications: Ambien.

Medical Needs: Help to come to medical appointments. [REDACTED]
[REDACTED] Family Practice.

DHS-49B: Worker Observations and Comments: Difficulty with breathing, hostile demeanor, memory, wears glasses, signs of fatigue, difficulty sitting, difficulty standing, difficulty understanding, withdrawn. [REDACTED] DE 1, p. 4

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 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).

The medical evidence has established that Claimant has mental limitations that have more than a minimal effect on basic work activities; and Claimant's impairments have lasted continuously for over twelve months; and are expected to last a lifetime. See findings of facts 8-9. There are no medical records that establish any physical impairments that prevent 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 impairments are 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 his 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.

The undersigned in reviewing the medical information did not find an established diagnosis that fits under a listing. Although, [REDACTED] suggest a ruling out of alcohol induced persisting dementia.

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 because medical records do not establish a diagnosis consistent with the information in the file. 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.

There were no physical limitations identified in the medical records; and the record establishes, in general, good independent physical functioning; and even good rational reasoning like cashing IRAs to have money. See finding of fact 9.

But there is troubling information in the record and the record was mostly established by the State of Michigan, Michigan Rehabilitative Services. For instance: [REDACTED]

[REDACTED]

[REDACTED] did not demonstrate the interpersonal skills necessary to be successful in a work environment. At different times and for no apparent reason, he would yell out . . . but [REDACTED] continued to work . . . and this was unsettling to other workers. It was reported by one worker [to the undersigned] that there was an uncomfortable feeling when [REDACTED] talked to this worker and that [REDACTED] did not know the boundaries and would get right in his face. The worker would back up and [REDACTED] moved forward. [REDACTED] was never overly belligerent but it was apparent from his body language and response that he was becoming agitated. He would distance himself and his work would slack off. [REDACTED]
Department Exhibit 1, pages 34-35.

Thus based on this, and other information in the medical records, it is the finding of the undersigned that Claimant is “disabled” at step four.

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 medical evidence to support a finding that Claimant's impairments meet the disability requirements under SSI disability standards, and prevent past work and other work for ninety days. This Administrative Law Judge finds the Claimant is "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 State Disability Assistance programs.

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

Accordingly, The Department is ORDERED to initiate a review of the December 2007 application to determine if all other non-medical eligibility criteria are met. The Department shall inform Claimant of its determination in writing. Assuming Claimant is otherwise eligible for program benefits, the Department shall review Claimant's continued eligibility for program benefits in April 2010.

The Medical Social Work consultant in conjunction with the Medical Review Team is to consider the appropriateness of ORDERING the Claimant into mandatory mental health treatment and substance abuse counseling.

Further, a referral is to be made to Adult Protective Services to consider benefit fund management on behalf of the Claimant; and other actions as necessary.

/s/

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

Date Signed: 04/24/09

Date Mailed: 04/24/09

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:

