

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. 2008-1788

Issue No. 2009; 4031

Case No:

Load No.

Hearing Date:

February 28, 2008

Wayne 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 February 28, 2008. The Claimant and his sister ██████████ appeared at the Department of Human Services (Department) in Wayne County ██████████

The record was left open to obtain new medical information. The undersigned issued an Interim Order. No new medical records were received. The record closed. This matter is now before the undersigned for final decision.

ISSUE

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 May 18, 2007.
- (2) On July 26, 2007 the Department denied the application; and on December 28, 2007 the SHRT denied the application based on lack of mental/physical impairment that prevents basic work activities; and citing the materiality of drug and alcohol abuse.
- (3) September 27, 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 forty-four years of age.
- (5) Claimant completed grade 8; and can perform basic math.
- (6) Claimant last worked in September 2005 when laid-off but employed at [REDACTED]
- (7) Claimant has alleged medical history of hypertension, high blood sugar, right/left foot gout with pain in toes, ankles, knees and wrists and bilateral peripheral neuropathy for 10 years and depression.
- (8) February 2007, in part:

Psychological Evaluation. HISTORY and OBSERVATIONS: Ambulatory with fluid movements. HT 72", WT 274 pounds. Good hygiene and grooming. Currently lives in apartment by himself. Has not taken any medications since December 2006 for depression, diabetes and gout. Not involved with mental health treatment. States hospitalization in November 2006 for suicide attempt. Drinks alcohol daily; 12 beers per day. Admits to history of cocaine and marijuana but states no use for six years. States has been incarcerated several times.

Test Behavior: overall interactions were positive, was friendly, outgoing and cooperative. Good orientation to task with understanding of directions, was attentive, stayed on task and was energetic. Responses were coordinated, verbal and displayed good effort. Appeared relaxed and interested throughout testing session. Full Scale IQ was 81, which is low average range of intellectual

functioning and believed valid. No other records were available for review. Believed to be unable to manage won benefit funds due to alcohol dependence. [REDACTED]  
Department Exhibit (DE) 1, pp. 30-35.

(9) May 2007, in part:

HISTORY: DM2, HTN, Peptic Ulcer, Substance Abuse—recovery.

Gouty-arthritis. Carpel tunnel.

CURRENT DIAGNOSIS: Being treated for DM, HTN, GERD.

Height 6' Weight 263, BP 113/75

NORMAL EXAMINATION AREAS: General, HEENT, Respiratory, Cardiovascular, Neuro, Mental.

FINDINGS: 1+ bilateral lower extremity edema. Decreased sensation to both feet, ankles.

CLINICAL IMPRESSION: Stable.

PHYSICAL LIMITATIONS: All [responses] subjective and based on patient report. Limitations expected to last more than 90 days. Lifting/carrying up to 10 pounds 1/3 of 8 hour day; stand and/or walk less than 2 hours in 8 hour day; sit about 6 hours in 8 hour day; no need for walking aid; no use of either hands/arms for simple grasping, fine manipulating; use of both arms/hand for reaching, pushing/pulling; no use of either foot/legs for operating foot controls depends on degree of gout. History of peripheral vascular disease.

MENTAL LIMITATIONS: comprehension, reading/writing, poor short term memory, patient thinks due to ETOH abuse. Can meet own needs in home. Medications: Glucophage, Actos, Lisinopril, Zantac, plus psychiatric medication. [REDACTED]

[REDACTED] Department Exhibit 1, pp. 14-15.

Psychiatric Evaluation: DIAGNOSIS: AXIS I: Schizoaffective Disorder, depressed type; Alcohol dependency; History of cocaine and cannabis abuse.

HISTORY: Currently living with mother but before was renting a house. Feeling depressed since a teen. Last November he called police told them he had a gun so they would come to kill him and was taken to DRH. [REDACTED] he was very depressed and took overdose and was taken to hospital. No present suicidal/homicidal ideation or plan. Current psychotropic medications Celexa, Seroquel, Librium and Effexor.

Mental Residual Functional Capacity Assessment: Moderately to markedly limited in 15 of 20 work functions. Can remember

simple instructions and carry out simple instructions; and ask simple questions and behave in socially appropriate manner and adhere to basic standards of neatness and cleanliness. [REDACTED]

[REDACTED] DE 1, pp. 16-29.

### 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 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 (6<sup>th</sup> 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 (6<sup>th</sup> Cir. 1988); *Farris v Sec’y of Health & Human Servs*, 773 F2d 85, 90 (6<sup>th</sup> Cir 1985).

The medical evidence has established that Claimant has physical and mental limitations that have more than a minimal effect on basic work activities; and Claimant's impairments were medically documented from February 2007; and are expected to last a lifetime based on medical diagnoses. See Findings of Facts 8 and 9. 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 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.

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 loss of sensation to bilateral feet and ankles; and schizoaffective, depressed type disorder. Appendix 1 of Subpart P of 20 CFR, Part 404; Listing 1.00, *Musculoskeletal System* and Listing 12.04 *Affective Disorders* evaluates listing level impairments applicable to the Claimant's impairment.

After reviewing the criteria of the listings, the undersigned finds the Claimant does not meet the listing requirements because of the lack of medical records after May 2007.

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 in manufacturing assembly type factory work. According to [REDACTED], the Claimant provided all physical functioning questions. The Claimant contends to lifting to 10 pounds, reaching and pushing/pulling abilities. There was medical documentation of loss of lower extremity sensation at feet and ankles. These facts are persuasive that the Claimant cannot return to past relevant work. Therefore, the undersigned finds it necessary to continue to evaluate the Claimant's physical limitations under step five in the analysis.

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 functional capacity," defined simply as "what can you still do despite you 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 limitations.

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.

The Claimant and his sister alleged the Claimant had learning disorders; and this effected the Claimant's reading English. But there was insufficient evidence to confirm this problem. The undersigned relies on the medical records, which do not establish reading problems. See Finding of Facts 8-9. 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-four 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 literate and 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 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 not 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 "not disabled" for purposes of the Medical Assistance program and the State Disability 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: February 26, 2009

Date Mailed: March 2, 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.

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:

