

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. 2008-21810
Issue No. 2009; 4031
Case No: [REDACTED]
Load No. [REDACTED]
Hearing Date:
October 1, 2008
Sanilac 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, the Claimant and his mother [REDACTED] appeared at a hearing held on October 1, 2008 at the Department of Human Services (Department) in Sanilac County.

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 (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) On May 16, 2008 the Claimant applied for MA-P and SDA; previous application in February 2007 was denied.

(2) On May 19, 2008 the Department denied the application; and on November 3, 2008 the SHRT guided by Vocational Rule 204.00(H) denied the application finding the medical records supported an ability to perform other simple, unskilled work.

(3) On May 30, 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-one years of age.

(5) Claimant completed grade 12 and training in broadcasting for one year; and can read and write English and perform basic math.

(6) Claimant last worked part-time in November 2007 to March 2008 as a [REDACTED]; and some experience in retail sales.

(7) Claimant has alleged a medical history of ten years of diagnosed bipolar disorder and depression with isolation, decreased energy, agitated actions of wall hitting, and suicidal plans with treatment on/off for nine-ten years; and a history of alcohol and drug use with last use 2008; and sleep apnea and hypertension.

(8) 2001, in part:

2001: History of drinking to unconsciousness and drug use but not currently. Has been in treatment with medications of Paxil, Serzone, Prozac and Zoloft at present. No psychiatric hospitalizations but past suicidal ideation and plan. Sleep apnea diagnosed and has C-PAP machine which does not help. He knows he is overweight. States had problem with sticking to things, finishing things and following through. DIAGNOSES: AXIS I: Major depression, recurrent, Severe without Psychotic Features. Rule out Dysthymia with Major Depression superimposed. R/O ADHD. Will prescribe Celexa; and return in four weeks. [REDACTED] Department Exhibit (DE) 1, pp. 15-18 and 11-14 and 19-22.

2001: Evaluation for ADD. Testing opinion: High probability of ADD on one test; with low probably on next test leading to inconclusive results. Excellent command of speech and uses effectively, friendly, likable, high IQ and creative, no outward appearance of [REDACTED] DE 1, pp. 23-26.

(9) January to July 2008, in part:

January: Said he is doing OK, mood generally alright, still mood swings but occur more rapidly and milder than before. Told him Lithium is probably controlling degree of severity. Job ended; and going to Detroit to look for work. Not taking blood pressure medication. He agreed to try Inderal. Was euthymic with bright affect. Talkative and appropriate. No loosening of association or flight of ideas. No suicidal or homicidal ideation. No psychotic symptoms. Generally stable. [REDACTED]

July: Discouraged and living with mom; and getting along OK. Depressed about future. Going to St. Clair to spend time with sister and find some work because needs to make money and have better direction in life. Dysphoric, tearful, affect blunted. Thoughts were logical and organized. No imminent plans of hurting self. Medications: Lithium, Inderal, Valium, Lexapro, Lamictal. Return one month. [REDACTED] DE pp. 59-70.

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 March 2008. Thus, 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 that support treatment with counseling and medication for mental impairments with longitudinal medical records of treatment for mental impairments as far back as 2001. There are no medical records noting physical impairments/limitations. The medical evidence has established that Claimant has a mental impairment that has more than a minimal effect on basic work activities. The impairments have lasted continuously for over 12 months. It is necessary to continue to evaluate the Claimant’s impairments 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 and mental 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 the 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. In this matter, the medical records establish a diagnosis of major depression/bipolar disorder. Listing 12.04 *Affective Disorders* is the most relevant to the Claimant's diagnosis and medical records.

The undersigned's decision was based on Listing 12.00C. *Mental Disorder; Assessment of Severity*. We measure severity according to the functional limitations imposed by your medically determinable mental impairment(s). We assess functional limitations using the activities of daily living; social functioning; concentration, persistence, or pace; and episodes of decompensation. Where we use "marked" as a standard for measuring the degree of limitation, it means more than moderate but less than extreme. A marked limitation may arise when several activities or functions are impaired, or even when only one is impaired, as long as the degree of limitation is such as to interfere seriously with your ability to function independently, appropriately, effectively, and on a sustained basis.

In reviewing the medical records the undersigned finds the Claimant's mental impairment does not meet the level of severity required by the listings. Professional psychiatric evaluators for most of the medical reports noted the Claimant to be alert, orientated times three. Affect bright and euthymic. Mood stable. Taking medications for mental impairment and for blood pressure. No homicidal ideation; and no suicidal imminent plans. There was no medical evidence of episodes of decompensation i.e. hospitalizations. The medical opinions do not constitute severity sufficient to meet the requirements of the Listing 12.04.

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 broadcasting. The Claimant testified he could not do past relevant work because he was too tired, couldn't sleep or can't get out of bed. The Claimant had no medical evidence of physical impairments. While these symptoms are general and non-specific, the undersigned decides the Claimant cannot return to past relevant work.

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 because the claimant does have some obesity problems, which may limit mobility. 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-one 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.

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. 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 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 20, 2009

Date Mailed: February 24, 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:

