

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.: 2008-21912

Issue No.: 2009, 4031

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

July 23, 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 July 23, 2008. The Claimant and [REDACTED] case manager appeared at the Department of Human Service (Department) in Jackson County.

The record was left open to obtain additional medical information. An Interim Order was issued to obtain additional medical records. No new medical records were received; except a letter from the Claimant alleging in part: "The department has refused contact and has not sent paperwork ordered by the judge at hearing." The record closed.

An issue at hearing was a re-application for MA-P and SDA dated in August 2007 and a request for hearing dated in October 2007. The undersigned will review medical records for disability from the date of the re-application, August 10, 2007; and the application dated February 1, 2008. But the undersigned will not consider medical records unsigned or written over, as valid. The matter is now before the undersigned for a final decision.

ISSUE

Whether the Department properly determined the Claimant was “not disabled” for purposes of Medical Assistance based on disability (MA-P) and State Disability Assistance (SDA) programs since August 2007?

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 August 10, 2007 and February 1, 2008 the Claimant applied for MA-P and SDA.
- (2) In November 2007 and on April 1, 2008 the Department denied the applications; on June 17, 2008 the SHRT denied the April 1, 2008 application finding the medical records indicated a capability of performing unskilled medium work.
- (3) On May 28, 2008 the Claimant filed a timely hearing request to protest the Department’s determination.
- (4) Claimant’s date of birth is [REDACTED]; and Claimant is now thirty-eight years of age.
- (5) Claimant completed grade 12 plus one year of college; and can read and write English and perform basic math.
- (6) Claimant was last employed in 2006 as a store stock worker, performed home care services at a home owned by his mother, in a machine shop.
- (7) Claimant has alleged a medical history of left foot problems, schizoaffective disorder with paranoia, hallucinations and delusions and isolation.
- (8) August and November 2007, in part:

CURRENT DIAGNOSIS: Metallic foreign body left foot with pain; schizoaffective disorder, hematochezia, dysphasia, hyperlipidema.

HT: 74", WT: 246, BP 124/84.

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

FINDINGS: Musculoskeletal: tender left plantar foot between 1 and 2 toes. Mental: schizoaffective disorder.

CLINICAL IMPRESSION: Stable.

PHYSICAL LIMITATIONS: Limited. Lifting/carrying less than 10 pounds 2/3 of 8 hour day; 10 pounds 2/3 of 8 hour day; 20 1/3 of 8 hour day, never 25 or over; stand and/or walk less than 2 hours in 8 hour day; sit about 6 hours in 8 hour day; use of both hand/arms for simple grasping, reaching, pushing/pulling, fine manipulating; use of right feet/legs for operating controls. Can do things but just doesn't due to left foot and mental problems.

MENTAL LIMITATIONS: Sustained concentration and social interaction. [REDACTED]. Department Exhibit (DE) pp. 43-44

PSYCHIATRIC EXAMINATION REPORT: Mildly disheveled and smelly. Slight limp left leg. Reports poor work history due to poor concentration and stubbornness. Currently on Risperdil and reports benefit from medications. But history of non-compliance with medication and was hospitalized.

Alert, orientated times 3, intact abstract thought. Memory and concentration mildly impaired. Currently stable. Daily functioning overall appropriate but needs direction on self-care and nutrition.

DIAGNOSES: Axis I: Psychosis NOS, Cannabis and tobacco dependence. Able to manage own benefit funds.

Markedly limited in accepting instructions and responding appropriately to criticism from supervisors. [REDACTED], 49-52.

(9) December 2007, in part:

PSYCHIATRIC EVALUATION:

Able to communicate very clearly. HISTORY: Stated went to ER because he felt overwhelmed and depressed and alleged flashbacks and feeling very unsafe. Similar history to past psychiatric

hospitalizations. Was prescribed Risperdil and Consta every two weeks. Stated after discharge, things fell apart and was unable to get disability, states had no transportation and unable to make appointments in order to address his substance abuse issues. States he has hard time convincing people that he needs disability. I am dictating everything in front of him so he can correct.

Chews tobacco for last 20 years; and heavy use of alcohol in past year; and cannabis use off/on for 20 years and urine drug screen was positive but he denied any illicit drugs.

I think this patient is on adequate amount of medications. I don't see any depression or anything at this time. Dressed nicely, normal personal hygiene, pleasant and friendly. I don't see any depressive component. No helplessness or hopelessness. No desire to hurt self or others. No psychosis. No delusional thinking. No short-term or long term memory deficit. Abstraction and general knowledge are all intact. Not suicidal or homicidal. DIAGNOSIS: Axis I: The hospital put it Psychosis, NOS. Axis V: 60-70. He will continue current medications and return in two weeks for evaluation of medication effect. All relevant blood serum tests were normal to prescribe medications. [REDACTED]. [REDACTED]

[REDACTED] DE 1, pp. 16-21

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 400.10, *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 CFR 416.905

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). It is the finding of the undersigned, based upon the testimony, that the Claimant had not performed SGA since 2006; and not eliminated from a finding of disability at step one; further review of the claim is necessary.

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 a mental impairment that would impact performance in basic work activities. The medical evidence has established that Claimant has an impairment that has more than a minimal effect on basic work activities; and according to the medical records, Claimant’s impairment has lasted by the medical record evidence continuously since August 2007. See finding of facts 8-9.

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 impairment is a “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 Claimant alleges pain in his left foot and was observed limping. According to the Claimant’s testimony, it is not operable. There was no medical evidence that the Claimant was

non-ambulatory or had loss of function for 12 months. At hearing the Claimant testified to the ability to stand and walk for one to one and one-half hours.

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 functional mental limitations according to Listing 12.00 *Mental Disorders*.

The medical records indicate the Claimant has been under treatment both psychiatric and prescription medications in December 2007. The medical records do not substantiate that the Claimant is markedly impaired by psychosis or depression. The Claimant testified to not seeing a medical doctor since January 2007 or [REDACTED] since December 2007.

In this case, for the reasons set out above, 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 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 normal for all body systems except the mental impairment and left foot pain. The medical records indicated the Claimant was completely ambulatory. There were no medical records which strictly limited the physical functioning on the Claimant's ability to do work.

The Claimant's past work was in 2006; and at hearing the Claimant testified to an inability to return to store stocking duties due to his mental condition and attendance problems. The undersigned accepts this testimony; and finds the Claimant cannot return to past relevant work under step four.

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 thirty-eight 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 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 program and State Disability Assistance since August 2007.

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: 03/26/09

Date Mailed: 03/27/09

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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