

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.: 2008-22797

Issue No.: 2009, 4031

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

September 15, 2008

Bay 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 September 15, 2008. The Claimant, his sister, [REDACTED] appeared at the Department of Human Service (Department) in Bay County.

The record was left open to obtain additional medical information. An Interim Order was issued for additional medical records that were reviewed by 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 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 benefits for MA-P and SDA were re-determined in April 2008; and the onset of acute liver failure, cirrhosis was May 2007 with grant of MA-P/SDA.
- (2) On May 22, 2008 the Department denied the application; and on March 27, 2009 the SHRT guided by Vocational Rule 202.17 denied the application because medical records indicated a capacity to perform light 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 the Claimant is thirty-six years of age.
- (5) Claimant completed grade 9; and can read and write English and perform basic math.
- (6) Claimant last worked in 2005/2006 in retail stocking, restaurant maintenance, cooking, and factory type work.
- (7) Claimant has alleged a medical history of decreased energy; and easy fatigue with slight exertion, cirrhosis of the liver with decrease of icterus and ascites, hypertension, stomach ulcer.
- (8) August 2008 and February 2009, in part:

August 2008: Lab Tests: Bilirubin, Total—high 2.1 (Scale 0.2-1.2mg/dL); Alkaline phosphatase—high; AST—high. [REDACTED]

February 2009: History: alcohol abuse and intoxication

CURRENT DIAGNOSIS: Cirrhosis of the liver. History of alcoholic hepatitis.

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

FINDINGS: Back, mild degenerative.

CLINICAL IMPRESSION: Stable.

PHYSICAL LIMITATIONS: Temporary disability; expected
return to work: six months [August 2009]. Lifting/carrying less
than 10 pounds 2/3 of 8 hour day; up to 20 pounds 1/3 of 8-hour
day; never over 25; stand and/or walk at least 2 hours in 8 hour
day; sit less than 6 hours in 8 hour day; use of both hand/arms for
simple grasping, reaching, pushing/pulling, fine manipulations; use
of both feet/legs for operating controls. Can meet own needs in
home. MENTAL LIMITATIONS: None. Medications: Aldactone,
Lasix, Inwas, KCL. [REDACTED]

January 2009: Lab tests: Globulin—high; Bilirubin, Total—high—
2.3 (Scale: 0.2-1.2mg/dL); WBC—high; Absolute Neutrophils –
high. [REDACTED] Department Exhibit (DE) N, pp. 1-5.

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 that he had not performed SGA since 2006. 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 physical function limitations. The medical evidence and testimony has established that Claimant has a physical impairment that has more than a minimal effect on basic work activities. The Claimant’s medical records do not document mental 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 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 5.00 *Digestive System*. The medical evidence demonstrates symptoms of jaundice and ascites have nearly resolved. The remaining symptoms are fatigue with exertion and some abnormality of laboratory serum tests including bilirubin, which is the liver breakdown of old red blood cells.

This Administrative Law Judge finds the Claimant is not presently disabled at the third step for purposes of the Medical Assistance (MA) program due to the lack of medical records establishing the intent and severity of Listing 5.00. 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 the unresolved symptoms of cirrhosis. Jaundice was clearing; ascites was drained. [REDACTED] does not find any abnormality of the abdomen but has repeated serum blood tests over a continuous period of time; over one year; and the bilirubin result remains out of scale. The Claimant's last work was retail stocking, restaurant maintenance and cooking.

[REDACTED] opines the Claimant cannot return to work until October 2009. Given this medical opinion and the blood test results, the undersigned agrees. The Claimant is presently disabled at step four. It is the finding of the undersigned, based upon the medical data and hearing record that Claimant is "disabled" at the fourth step until October 2009.

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 prevents other work activities 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 program.

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

Accordingly, The Department is ORDERED to initiate a review of the April 2008 re-determination 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 October 2009.

/s/

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

Date Signed: 04/14/09

Date Mailed: 04/14/09

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:

