

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. 2008-22802
Issue No. 2009; 4031
Case No: [REDACTED]
Load No. [REDACTED]
Hearing Date:
November 13, 2008
Oakland 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 November 13, 2008 at the Department of Human Services (Department) in Oakland County, District 3. The Claimant and his representative [REDACTED], and his mother [REDACTED] [REDACTED] appeared for the hearing.

The record was left open to obtain additional medical information. The medical information was submitted to the State Hearing Review Team (SHRT) and the application was denied. 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 based on disability (MA-P) and retroactive MA-P for the months of September, October and November 2007 and State Disability Assistance (SDA) programs?

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 December 26, 2007 the Claimant applied for MA-P and SDA.
- (2) On February 29, 2008 the Department denied the application; and on December 8, 2008 the SHRT guided by Vocational Rule 203.28 denied the application because medical records were evidence for the capacity to perform unskilled medium work, citing the materiality of substance abuse per P.L 104-121.
- (3) On May 27, 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-nine years of age.
- (5) Claimant completed grade 11 and a GED.
- (6) Claimant last worked in [REDACTED]; fired from construction clean up crew, a cook at a bar, and alleged that while incarcerated did no work duty due to hand and breathing problems and psychiatric medication.
- (7) Claimant has alleged a medical history of bipolar/depression disorder and childhood learning disability, fatigue due to hepatitis C, breathing problems, right/left painful, swollen hands due to psoriatic arthritis

(8) [REDACTED], in part:

[REDACTED]: To ER for pain and swelling both hands for one week. Admits to IV drug use of heroin/cocaine and drinking alcohol. No major medical problems. Admits to use of alcohol, cocaine and heroine with last use was two days ago. Drug screen positive for those substances. Denied shortness of breath, cough, headache, pruritus and chest pain. Physical Examination: BP 123/66. Head

and Neck, Lungs, CVS, Abdomen, Lower extremities, Neurological: [all within normal limits.] Upper extremity: Left hand swelling with redness and tenderness. Can wiggle fingers, extend and flex wrist but unable to make a fist. Right hand minimal swelling but no pain, tenderness or redness noted. Advised to stay off cocaine and heroine, follow with PCP; and can return to work after [REDACTED]. [REDACTED]. [REDACTED].

October: FINAL DIAGNOSIS: Left hand cellulites. Heroin/cocaine abuse. Anxiety. Depression. Tobacco abuse.

HISTORY OF ILLNESS: Brought to hospital for left hand pain and swelling for three weeks. Medically treated with analgesics, steroids, antihistamines. Echocardiogram negative for infections valves and ejection fraction was normal. Slowly responded to treatment and discharged home with antibiotics and pain medication. Department Exhibit (DE) 1, pp. 7-29.

(9) [REDACTED], in part:

Independent Consultation: C/O chronic obstructive pulmonary disease, crippled hands, hepatitis C, bipolar disorder. Medications: Methadone from methadone clinic, Prednisone, Spiriva, Advair, Neurotin, Zoloft, Deseryl and Motrin. Smokes one pack a day for 22 years. Drinking occasionally for 20 years. Used heroin for 22 years.

PHYSICAL EXAMINATION: HT 70“, WT 171, BP 130/90. Well built, well nourished, no acute distress, ambulatory without walking aid. Eyes without glasses: right 20/30, left 20/30. HEENT, Neck, Heart, abdomen, Extremities, Musculoskeletal, Neurological system: [All within normal limits.] Skin: Tattoos and needle tracts. Chest and Lungs: few rhonchi. Slight puffiness of hands. Grip strength 25 right, 35 left. Range of motion for all joints: within normal limits.

Laboratory Findings: Pulmonary function studies indicate severe restrictive defect but his effort was poor and cooperation was fair so results not considered quite valid. There was significant improvement on FVC after bronchodilator. Conclusion found to have chronic obstructive pulmonary disease. Chronic hepatitis C but no clinical sign of portal hypertension. Bipolar disorder and long history of heroin and alcohol use. [REDACTED]. [REDACTED]. SHRT Exhibit pp. 1-19.

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 [REDACTED]. 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 (6th Cir 1985).

In this case, the Claimant has presented medical evidence to support a finding that the Claimant has mental/physical limitations which impact his abilities to perform basic work

activities, which were noted in [REDACTED] records in [REDACTED]. 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 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 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.

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 bipolar disorder and breathing problems. See Finding of Facts 8-9. [REDACTED] found slight bilateral hand puffiness in [REDACTED]. But the Claimant stated at the examination that he no longer had psoriasis lesions; and the doctor did not find any lesions at her exam. [REDACTED] found full pain-free range of motion of all joints in [REDACTED] noted the Claimant is asymptomatic from hepatitis C.

Appendix 1 of Subpart P of 20 CFR, Part 404. Listing 12.04, *Affective Disorders* is relevant to the diagnosis of Bipolar Disorder. After reviewing the criteria of the listings, the undersigned finds the Claimant's medical records do not substantiate that the Claimant's mental impairment meets the intent or severity of listing requirements of 12.04. The Claimant's mental disorder was diagnosed concomitant with active substance abuse including alcohol, heroin and cocaine. The Claimant admitted to [REDACTED] to "social" alcohol consumption but needle tracts were present on his extremities. In the [REDACTED] records [REDACTED] to [REDACTED], presumably without substance use; records indicate stable mental status.

The Claimant has no medical evidence to establish the criteria of Appendix 1 of Subpart P of 20 CFR, Part 404, listing 3.02: Chronic pulmonary insufficiency because the pulmonary function test was not considered valid due to poor effort and fair cooperation.

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 strenuous: construction work; and the undersigned decides the Claimant cannot return to past relevant work due to breathing problems with exertion and the findings of [REDACTED]

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 alleged learning disabilities but the Claimant did take and pass the GED test which requires concentration and reading abilities.

Other records support competent reading and writing abilities as well. Thus the Claimant has not proven reading or writing deficits. 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-nine 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. [Claimant told a [REDACTED] he had two years of college]; 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, and prevents other work 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 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:

