

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.: 2008-28747
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
November 6, 2008
Wayne County DHS (57)

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 6, 2008. The Claimant and the representative appeared at the Department of Human Service (Department) in Wayne County.

The closure date was waived to obtain additional medical information. An Interim Order was issued to obtain new medical records which were submitted; and reviewed by the State Hearing Review Team (SHRT). The application was denied for time periods October 2007 to July 2008. 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) retroactive MA-P for the month of October 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 January 18, 2008 the Claimant applied for MA-P and SDA.
- (2) On May 13, 2008 the Department denied the application: and on March 9, 2009 the SHRT guided by Vocational Rule 202.13 denied the application finding medical evidence for the ability to perform light work; and citing the materiality of drug and alcohol abuse.
- (3) On August 5, 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 fifty-three years of age.
- (5) Claimant completed grade 12 and a nurse's aid certificate; and can read and write English and perform basic math.
- (6) Claimant last worked in 2000 in general labor: roofing, Machine handling, material control, foreman in making struts and lumbar yard foreman.
- (7) Claimant has alleged a medical history of enlarged heart, hypertension for ten years, circulatory problems of lower extremities, bipolar disorder with hallucinations and anger outbursts.
- (8) October 2007, in part:

Visiting sister in hospital and got blood pressure tested and was seen in ER for elevation and developed chest pain. Has untreated high blood pressure for one month. Past history of depression and saw psychiatrist and given Lexapro and Invega. Is smoker and last use of heavy drugs was 5 months ago. BP 166/112. Physical Examination: [Within normal limits.] Except icterus will check liver/kidney functions. Negative CT scan chest. Lungs clear and heart enlarged by chest X-ray. [REDACTED] Hospital.

Department Exhibit (DE) 1, pp. 10-49 and 63-71 [Records incomplete for test results and condition on discharge.]

(9) April and May 2008, in part:

April: INDEPENDENT PSYCHIATRIC EXAMINATION:
History of hypertension for 4-5 years. Not under care of regular doctor but goes to free clinic Medications are Benicar and Motrin. Goes to ER for hypertension and chronic left lower leg ulcer. Appetite and breathing are good. Denies problems of: kidney, liver, jaundice, cirrhosis, pancreatitis, feet and ankle swelling, gout, blood clots and fractures. History of heroin abuse for 10 years. Drinks alcohol on/off. Sees psychiatrist at [REDACTED].

Has open deep ulcer left lower leg for 3 months which hurts on walking and he puts dressing on it. Mild edema left lower leg but feet not cold and right leg is normal.

PHYSICAL EXAMINATION: Alert, cooperative, WT 265, BP 190/120, HT 72", Vision right 20/20, can't see on left. No jaundice, Gait normal. Able to get on/off exam table and raise both arms above head. HEENT, Fundus, Chest, Cardiovascular, Abdomen, Bones and Joints, Nervous System: [All within normal limits.] In general: no prolonged standing, walking or lifting. [REDACTED], MD. DE 1, pp. 6-8.

May: MENTAL STATUS EVALUATION: History: Out of Lexapro and Invega and started using alcohol and heroin. Denies suicidal plans and not violent. Alert, cooperative, pleasant, neatly dressed and groomed and not in acute distress. Thinking clear and goal directed. Reality was good. Affect shallow. Mood anxious and sad. Denies suicidal ideation. Oriented times 3 and memory intact. Insight limited. Judgment adequate.

DIAGNOSES: Axis I: Depressive disorder, NOS. alcohol and Heroin abuse. Patient agreed to DD/MSA program, group therapy, supportive therapy, AA and NA MEETINGS. Given prescription for Lexapro and Invega. [REDACTED], MD. Psychiatrist. Claimant Exhibit A, 5-6.

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 2000. 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 medical evidence of physical/mental limitations that are more than minimal and impact basic work activities. The impairments will last his lifetime. 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 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.

The medical evidence establishes lower left leg ulcer, hypertension and depression; and noncompliance and active substance use. The severity, intent and criteria of Appendix 1 of Subpart P of 20 CFR, Part 404, Listing 1.00 *Musculoskeletal System* and Listing 12.00 *Mental Disorder* were evaluated. The Claimant does not meet either of these listings due to the lack of medical records establishing the criteria of severe loss of function under 1.00Ba and severe loss of function under 12.00C. There were no medical records establishing end organ damage due to hypertension except an enlarged heart; and there were no medical records establishing limitations due to the enlarged heart and there was a normal heart evaluation in April 2008. But medical records were not complete.

A May 2008 Mental Residual Functional Capacity was signed by [REDACTED] opining some markedly severe impairments in work related mental functions. The undersigned did not find this opinion credible in light of other medical records including [REDACTED] other May 2008 mental status evaluation. See finding of facts 8-9.

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 the listings of Appendix 1 of Subpart P of 20 CFR, Part 404. 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 do not establish ambulation difficulties or deficits in the use of upper and lower extremities. In April 2008 the Claimant had a lower left leg ulcer. But there were no medical records establishing physical limitations due to the lower left leg ulcer after April 2008 or limitations due to hypertension, depression or the heart. There were no medical records establishing the use of a cane; and the undersigned concludes the Claimant has adequate physical/mental functioning abilities to obtain illegal street drugs.

Past relevant work was general labor, including some foreman positions. Based on the strenuous nature of this work, the undersigned finds the Claimant cannot return to past work. Evaluation under step five will continue.

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 light work. Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines 20 CFR 416.969:

202.00 *Maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s).* (a) The functional capacity to perform a full range of light work includes the functional capacity to perform sedentary as well as light work. Approximately 1,600 separate sedentary and light unskilled occupations can be identified in eight broad occupational categories, each occupation representing numerous jobs in the national economy. These jobs can be performed after a short demonstration or within 30 days, and do not require special skills or experience.

(b) The functional capacity to perform a wide or full range of light work represents substantial work capability compatible with making a work adjustment to substantial numbers of unskilled jobs and, thus, generally provides sufficient occupational mobility even for severely impaired individuals who are not of advanced age and have sufficient educational competences for unskilled work.

(c) However, for individuals of advanced age who can no longer perform vocationally relevant past work and who have a history of unskilled work experience, or who have only skills that are not readily transferable to a significant range of semi-skilled or skilled work that is within the individual's functional capacity, or who have no work experience, the limitations in vocational adaptability represented by functional restriction to light work warrant a finding of disabled. Ordinarily, even a high school education or more which was completed in the remote past will have little positive impact on effecting a vocational adjustment unless relevant work experience reflects use of such education.

(d) Where the same factors in paragraph (c) of this section regarding education and work experience are present, but where age, though not advanced, is a factor which significantly limits vocational adaptability (*i.e.*, closely approaching advanced age, 50-54) and an individual's vocational scope is further significantly limited by illiteracy or inability to communicate in English, a finding of disabled is warranted.

Claimant at fifty-three is considered *approaching advanced age*; a category of individuals age 50-54. Under Appendix 2 to Subpart P: Table No. 1—Residual Functional

Capacity: Maximum Sustained Work Capability Limited to Light Work as a Result of Severe Medically Determinable Impairment(s), Rule 202.13, for approaching advanced age, age 50-54; education: high school graduate or more; previous work experience, unskilled or none; the Claimant is “not disabled” per Rule 202.13.

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 prevent return to 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 for time periods October 2007 to July 2008.

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: 05/08/09

Date Mailed: 05/11/09

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:

[REDACTED]

(57)

[REDACTED]