

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.: 2008-28956

Issue No.: 2009, 4031

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

November 24, 2008

Muskegon 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 24, 2008. The Claimant, his mother, and his grandmother appeared at the Department of Human Service (Department) in Muskegon County.

The record was left open to obtain additional medical information; and received. The State Hearing Review Team reviewed the new records and denied the application. 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) 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 filed an application for MA-P and SDA on June 4, 2008; and because the Claimant was under 21, the Department found eligibility for Group 2 Medicaid.
- (2) On August 5, 2008 the Department denied the application; and on January 7, 2009 the SHRT denied the application finding the medical evidence sufficient to determine a return to other simple, unskilled work.
- (3) On August 13, 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 eighteen years of age.
- (5) Claimant completed grade 12; and can read and write English at a third grade level and perform basic math at a fifth grade level.
- (6) Claimant does not have past work experience.
- (7) Claimant has alleged a medical history of a lifetime of mental impairments including anger and forgetfulness and impulse control problems.
- (8) September to November 2008, in part:

September: Met with [REDACTED] for first time; and his mother did most of the talking. [REDACTED] lives with mother and grandmother. Explained the SC program [REDACTED].

October: Met at home with [REDACTED] and family members. Family said [REDACTED] appears to be higher function than what he really is; and has higher GPA because he was in special education. [REDACTED] would like to work a few hours but mother said not around money due to his spending. Has been involved with MRS and completed job prep classes. [REDACTED] has been threatened by his girl friend's new boyfriend. Will have psychology evaluation. [REDACTED].

October: Vital signs: BP 114/84, WT 220, HT 69." Evasive, child like in responses. Stated played video games. Stated spends much time working on 1984 race car. Admits to audio hallucinations. Denies depression. Stated sleeps OK. OBSERVATIONS: adequate hygiene, coherent speech, guarded behavior, mood stable. [Illegible] Nurse.

October: Living with grandparents for past 6 months. HISTORY: [REDACTED] has been following for past 5 years. Was diagnosed with attention-deficit hyperactivity disorder, bipolar disorder and learning disability. Tried multiple medications. Verbal IQ is 68, performance IQ 88, full scale IQ 76 is range of borderline intellectual functioning.

States doing well, sleeping well and good appetite. Energy level good, denies depression/anxiety. No evidence of psychotic symptoms. Denies suicidal/homicidal ideation. No behavioral problems while living with grandparents. Has had some violent outbursts in past; and hospitalized for uncontrollable, violent behavior. Outbursts occur when not stabilized on medication. Medical history is unremarkable. Medications Depakote, Ritalin, Seroquel, Abilify, Cogentin, Benadryl. Currently on probation.

MENTAL STATUS: Nicely, neatly dressed. Makes good eye contact however somewhat distractible. Able to answer questions appropriately and accurately. Stated mood was good. Affect full and spontaneous. Thought processes were relevant but simplistic. Denies perceptual disturbances, suicidal/homicidal ideations. DIAGNOSES: Axis I: Attention-deficit hyperactivity disorder. Bipolar disorder, type II, currently euthymic. Borderline Intellectual Functioning. [REDACTED]

November: Kicked out of bowling alley after argument with brother about use of father's bowling ball. Workers tried to calm him down and he felt cornered. He denied putting hands on anyone. [REDACTED] was reluctant to talk of incident. [REDACTED] Department Exhibit 1, pp. 111-117.

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 to never performing SGA. The undersigned decides the 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 of mental impairments. The medical evidence has established that Claimant has impairments that have more than a minimal effect on basic work activities; and Claimant’s impairments are expected to last. The medical records do not establish physical impairments that effect 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 support findings that the Claimant’s mental impairment are “listed impairment(s)” or equal to a listed impairment. 20 CFR 416.920(a) (4) (iii) According to the medical evidence, medical record supports findings that the Claimant’s impairments are “listed impairment(s)” or equal to a

listed impairment. 20 CFR 416.920(d). According to the medical evidence, alone, the Claimant can 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 12.00; and especially 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 de-compensation. 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.

The medical records establish a long history of impaired social functioning, impulsive agitated outbursts, impulsive activity like taking money when helping at a nursing home, and recently violent outbursts at a bowling alley. Has had assault charges against him and including a CSC on his record but he states another child lied about him; and no charges were filed.

The Claimant is taking multiple serious medications, which he needs assistance to remember to take. See finding of fact 8; also see Department Exhibit 1, pages 97-107 for July 2008. There were no medical records establishing that the Claimant can be left unsupervised for any length of time; and medical records established a lack of focus and concentration. The Claimant has friends who are in the younger age group 9-14. The Claimant has had fights with

family members and police were called but no charges placed; and the Claimant destroys items at home when angry.

This Administrative Law Judge finds the Claimant is presently “disabled” at the third step for purposes of the Medical Assistance (MA) program.

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 June 2008 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 April 2010.

Further, a referral is to be made to Adult Protective Services to consider benefit fund management on behalf of the Claimant; and other actions as necessary.

/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.

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cc:

