

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Claimant

Reg. No.: 2008-31028

Issue No.: 2009, 4031

Case No.:

Load No.:

Hearing Date:

December 11, 2008

St Clair 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 December 11, 2008. The Claimant appeared at the Department of Human Service (Department) in St. Clair County

The record was left open to obtain new medical information. Claimant waived the closure date on the record. The medical information was submitted to the 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) 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) The Claimant filed for MA-P and SDA on June 10, 2008.
- (2) On August 4, 2008 the Department denied the application; and on March 9, 2009 the SHRT determined the ability to perform other unskilled work.
- (3) On September 4, 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 forty-nine years of age.
- (5) Claimant completed grade 8; and was able to read and write English when completing DHS-49G. Department Exhibit (DE) 1, pp. 1-4.
- (6) Claimant last worked in January 2008 in landscape work and 2006 as a taxidermist for ten years, and has experience in cement, bricklaying, farm work/caring for animals.
- (7) Claimant has alleged a medical history of 1974 childhood head injury, bipolar disorder, painful back and legs, anxiety attacks and asthma.
- (8) February and June 2008, in part:

February: To ER complaining of uncontrollable anxiety and unable to sleep. Denies suicidal and homicidal ideation. No previous suicide attempts. Ran out of Seroquel for one week and his doctor is not available on Saturdays. Current medications: Lithium, Buspar, Wellbutrin and Seroquel. Physical Examination: [All within normal limits.] Given Ativan IM and stated great improvement. To follow up with psychiatrist as scheduled. Discharged with prescription for Seroquel in stable condition. [REDACTED]. DE 1, pp. 84-85.

June: Current Diagnosis: Bipolar disorder, depressed. Clinical Impression: Improving. Limitation is expected to last 90 days. Mental limitations in comprehension and sustained concentration, social interaction. Medications Seroquel and Lithium. Does not need help in personal care activities. [REDACTED] DE 1, pp. 81-83
- (9) December 2008 and January 2009, in part:

December 2008: INDEPENDENT PSYCHOLOGICAL EXAMINATION: History: Currently in outpatient psychiatric treatment with Wellbutrin, Seroquel, Lithium, Buspar and Ativan. States no current problems with sleep due to medication.

Summary: Primarily worked on family 20 acre farm. Receiving outpatient therapy and taking medications. He was alert, verbal and orientated times 3. Blunt, clipped affect. Memory in low average to borderline and had constricted fund of general knowledge. Poor at computations. Reasoning was literal and concrete and formal judgment is impaired. [REDACTED].
DE A, B, C.

January 2009: INDEPENDENT MEDICAL EXAMINATION States he has difficulty concentrating and therefore cannot read and write very well. Stopped taxidermy because he lost interest. Denying any limitations related to back, knees or right shoulder. Takes kids fishing and camping. Physical examination was unremarkable. [REDACTED]

Lumbar spine X-ray: Diffuse sclerosis of L5 vertebral body of unknown age/etiology. Minor degenerative changes. [REDACTED]
[REDACTED] DE D, E, F, G.

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 at hearing to not performing SGA since 2006. But records indicate last work was January 2008. This goes to credibility. But 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)

The medical evidence has established that Claimant has a mental impairment but there was no medical evidence of a physical impairment that was causing any symptoms; and the Claimant denied symptoms to [REDACTED] See finding of fact 9. The undersigned finds based on the medical records that the Claimant has mental impairments which are more than minimal, which effect basic work activities, and have lasted for over 12 months.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant’s physical 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 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 established depressive disorder with panic attacks and some noncompliance with medications. See finding of facts 8-9. Appendixes I, Subpart P of 20 CFR, Part 404, Listings discuss the analysis and criteria necessary to a finding of a listed impairment.

The undersigned's decision was based on Listing 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 decompensation. 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.

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 because impairments do not meet listing level requirements in severity. 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.

The Claimant is able to physically function; and has been under outpatient treatment for his depression disorder and panic attacks. According to the records, the Claimant last worked in

landscape services. The undersigned finds that based on the medical records, the Claimant can return to past work in landscape. But even under step five, the Claimant is “not disabled.”

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 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.

Claimant at forty-eight is considered *a younger individual*; a category of individuals age 18-49. 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 202.17, for younger individual age, age 18-49; education: limited or less—at least literate and able to communicate in English, see finding of fact 6 and 9; previous work experience, unskilled or none; the Claimant is “not disabled” per Rule 202.17.

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 prevent other unskilled 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. 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: 04/08/09

Date Mailed: 04/09/09

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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