

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.: 2008-8164
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
April 10, 2008
Kalamazoo 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 April 10, 2008. The Claimant appeared at the Department of Human Service (Department) in Kalamazoo County.

The closure date was waived to obtain additional medical information. An Interim Order was issued to obtain new medical records. The ordered records were not received. The record closed. The 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 April and May 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 June 19, 2007 the Claimant applied for MA-P and SDA.
- (2) On August 22, 2007 the Department denied the application: and on February 22, 2008 the SHRT denied the application finding medical evidence did not support a severe impairment and citing the materiality of alcoholism.
- (3) On November 2, 2007 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-four years of age.
- (5) Claimant completed grade 10; and can read and write English as evidence by the application completion in the record. Department Exhibit (DE) 1, pp. 7-10.
- (6) Claimant last worked in November 2006 as kitchen supervisor and cook, was assistant manager at a thrift store, certified watch/clock technician and a janitor. DE 1, p. 6
- (7) Claimant has alleged a medical history of left hip fracture leaving pain and a limp with limit on standing and a learning impairment with depression.
- (8) February and July 2007, in part:

February: Follow up from ER. States seen for withdrawal from alcohol and has been drinking since age 18 and trying to stop intermittently. Couldn't be treated until alcohol level was reduced; and was given [REDACTED] and he felt much better. Not attending 12 step meetings but resisting cravings for alcohol

Feels he has always been depressed all life and self-medicating with alcohol and there is some insight there. Multiple stressors with job loss, house loss and relationship loss.

He went to [REDACTED] who referred him to us for medications. Vital signs stable, no acute distress, thought content fluid, fairly good eye contact, no tremor notes, denies suicidal and homicidal ideation. States intention to stay sober and plan to attend support meetings. On Librium to return two weeks. [REDACTED]
[REDACTED]

July: CURRENT DIAGNOSIS: Mood disorder, tinnitus, hip pain, Iliotibial band syndrome. Alcoholism recovering.

HT: 69.5", 168, BP 120/78.

NORMAL EXAMINATION AREAS: HEENT; Respiratory; Cardiovascular, Abdominal.

FINDINGS: Limping gait; left hip pain in greater trochanter region with FABERE maneuver, pain with palpation; iliotibial band and bilateral tenderness multiple trigger points, left shoulder tenderness, tinnitus, left arm parathesias, negative Romberg, negative finger-nose; and flat affect, alert and orientated times 3. Negative X-ray hip/pelvis

CLINICAL IMPRESSION: Stable.

PHYSICAL LIMITATIONS: Limited; lifting/carrying up to 25 pounds 2/3 of 8 hour day; stand and/or walk at least 2 hours in 8 hour day; sit less than 6 hours in 8 hour day; no assistive devices are needed; use of both hand/arms for simple grasping, reaching, pushing/pulling; use of right feet/legs for operating controls. Can meet own need in home. MENTAL LIMITATIONS: None. Medications: [REDACTED]

MEDICAL NEEDS: Ambulatory, chronic ongoing illness will last lifetime.

No work at usual occupation or other occupation for one year. [July 2008] [REDACTED] 1, pp. 11-13.

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 November 2007. 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 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.

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 pain of left hip, depression and alcoholism for which, in April 2008, the Claimant alleges sobriety for one year. But as noted above, there were no new medical records submitted; and the last medical record was July 2007.

The undersigned notes the Claimant alleged by testimony a decreased ability with literacy. But the records of the Claimant's application establish reading, understanding and writing English. This damaged the credibility of the testimony of the Claimant; and further, the earlier records indicate the Claimant has attempted alcohol withdrawal and told medical personnel of the same stressors and losses.

In this matter, the medical records establish long time of alcohol abuse. 20 CFR 416.935 requires a determination of whether your drug addiction or alcoholism is a contributing factor material to the determination of disability through the factors of 20 CFR 416.935(a) through (2) (ii).

(a) General. If we find that you are disabled and have medical evidence of your drug addiction or alcoholism, we must determine whether your drug addiction or alcoholism is a contributing factor material to the determination of disability, unless we find that you are eligible for benefits because of your age or blindness.

(b) Process we will follow when we have medical evidence of your drug addiction or alcoholism. (1) The key factor we will examine in determining whether drug addiction or alcoholism is a contributing factor material to the determination of disability is whether we would still find you disabled if you stopped using drugs or alcohol.

(2) In making this determination, we will evaluate which of your current physical and mental limitations, upon which we based our current disability determination, would remain if you stopped using drugs or alcohol and then determine whether any or all of your remaining limitations would be disabling.

(i) If we determine that your remaining limitations would not be disabling, we will find that your drug addiction or alcoholism is a contributing factor material to the determination of disability.

(ii) If we determine that your remaining limitations are disabling, you are disabled independent of your drug addiction or alcoholism and we will find that your drug addiction or alcoholism is not a contributing factor material to the determination of disability.

There was no medical evidence the Claimant's remaining impairments were disabling. See finding of fact 8. Your impairment(s) must be severe and meet the duration requirement before we can find you to be disabled. You must have a severe impairment. If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further. 20 CFR 916.920a (5) (c).

The undersigned did not find any medical records that established disability in this matter; and agrees with the SHRT, alcoholism was a major contributing factor.

This Administrative Law Judge finds the Claimant is not presently disabled for purposes of the Medical Assistance (MA) program at step two due to lack of medical records establishing impairments unrelated to alcoholism.

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 prevents return to past work or other work for ninety days. See finding of fact 8. 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: 05/01/09

Date Mailed: 05/01/09

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

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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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