

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.: 2008-8622  
Issue No.: 2009, 4031  
Case No.:   
Load No.:   
Hearing Date:  
April 9, 2008  
Cheboygan 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 9, 2008. The Claimant appeared at the Department of Human Service (Department) in Cheboygan County.

The record was left open to obtain additional medical information. New medical records were received and reviewed by the State Hearing Review Team (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 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 an application for MA-P and SDA on August 22, 2007.

- (2) On October 22, 2007 the Department denied the application; and on June 26, 2008 the SHRT denied the application finding the ability to perform other unskilled work.
- (3) On November 14, 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 twenty-five years of age.
- (5) Claimant completed grade 12 and some college classes; and can read and write English and perform basic math.
- (6) Claimant last worked in 2003 in construction clean up, and a [REDACTED] helper but records indicate his family own a camera shop and that he worked in the family business. Department Exhibit (DE) 1, p. 273.
- (7) Claimant has alleged a medical history of anxiety attacks with people, fatigue, lack of sleep, depression and side effects like muscle spasms from medications.
- (8) [REDACTED], in part:
  - [REDACTED]: To ER for possible mental status changes at request of [REDACTED]. History of severe panic attacks and manipulating his medications against [REDACTED] advice. Today has been having a severe dystonic reaction. Physicians have wisely limited prescriptions to two week supply. Physical Examination: [Within normal limits.] Except for symptoms of dystonic attack. Will be admitted for observation. Dystonic reaction secondary to Geodon overdose, not believed to be suicide attempt but he id take intentional high dose. [REDACTED]. DE 1, pp. 155-156
  - [REDACTED] To ER for inability to urinate since yesterday. History of substance abuse, hernia repair, GERD and muscle spasms. C/O lower abdominal discomfort. Medications: Suboxone, Effexor, Neurotin, Previcid. Physical Examination: [within normal limits.] Except palpable bladder tenderness and ultrasound shoed 560ml urine and Foley was inserted and urine was released. Follow with [REDACTED] next week and initiate Flomax. [REDACTED]. DE 1, p. 190
- (9) [REDACTED], in part:

██████: HISTORY: Patient has had anxiety, depression and difficulty sleeping since childhood. He has only been partially responsive to medications and counseling.

CURRENT DIAGNOSIS: Depression. Severe insomnia.

HT: 72", WT: 229, BP 130/60.

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

FINDINGS: General and Mental: anxious.

CLINICAL IMPRESSION: Stable.

PHYSICAL LIMITATIONS: No limitations. MENTAL LIMITATIONS: in sustained concentration, memory and social interaction. Can meet own need in home. Medications: Clonidine, Effexor, Glucophage, Neurotin, Nexium, Seroquel. ██████

██████ Seen previously for evaluation in ██████; and full scale IQ placed him in low average range. At this time, reported felt unable to work because of problems with anxiety, depression and insomnia. Sees ██████ for general medicine and ██████. ██████ as psychiatric consultant since ██████ and sees counselor for substance abuse. Medications: Abilify, Effexor, Neurotin, Clonpine, Nexium, Seroquel and Wellbutrin.

FUNCTIONING: Uses computer every day and does things with photography. Parents own camera shop. Independent in ADLs and handles own finances. Helps with household chores. Has driver's license but not driving. Experiences drowsiness.

Reports low self-esteem. Only motivation is computer uses. Complains of disrupted sleep pattern. Appetite back to normal. Has gained weight. Can pay attention to a movie but not class room material. He guesses he can concentrate. Denied significant social and interpersonal problems but feels left out. No evidence of psychosis. Denied suicidal thought, urges, impulses to harm others. Normal orientation. Some memory impairment. Normal information. Some calculations errors. Some abstract thinking problems. Good at similarities and differences. Judgment was good. DIAGNOSIS: Axis I: Organic personality disorder. Organic Affective syndrome. Major depression, recurrent. Generalized anxiety disorder. History of opiate and marijuana use. Cannot

manage own benefit funds. [REDACTED]  
[REDACTED] DE, pp. 307-314

### 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 2003. 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 (6<sup>th</sup> 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 (6<sup>th</sup> 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 mental disorder evaluations and treatment since [REDACTED]. The medical evidence has established that Claimant has a mental

impairment but not a severe physical impairment; and the mental impairment that has more than a minimal effect on 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 not support findings that the Claimant's impairment 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.

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 *Mental Disorders*. The undersigned decides the Claimant mental impairment does not meet the severity or intent of the listing. 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 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 submitted do not establish lack of ability to function independently, appropriately, effectively on a sustained basis. The Claimant's medical records indicate some episodic lacks in appropriate functioning; and there was history of

failure to comply with medications and substance abuse history. Use of substances like alcohol changes behavior. 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 to meet the listings. 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 were essentially normal for all body systems except mental impairments. The Claimant testified to last relevant work as construction. There were no physical limitations in the medical records preventing return to construction. But the medical records establish a more sedentary lifestyle i.e. computer use and photography. The undersigned decides the Claimant cannot return to past relevant work.

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 sedentary work. 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 twenty-five 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; 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 past relevant or any other work for ninety days. This Administrative Law Judge finds the Claimant is presently "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 and State Disability Assistance programs.

It is ORDERED; the Department's determination in this matter is AFFIRMED.

/s/  
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Judith Ralston Ellison  
Administrative Law Judge  
For Ishmael Ahmed, Director  
Department of Human Services

Date Signed: 04/16/09

Date Mailed: 04/16/09

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:

