

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: 2008-9200  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
April 23, 2008  
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted by Administrative Law Judge Judith Ralston-Ellison on April 23, 2008 pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department. The undersigned Administrative Law Judge has written this hearing decision after review of evidence in the record including the recording of the actual hearing. At the hearing, the Claimant was present and testified. D. McBride appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA") program.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material and substantial evidence on the whole record, finds as material fact:

1. Claimant filed for MA & SDA on June 8, 2007.

2. Claimant's impairments are traumatic brain injury, low back pain, high blood pressure, seizures, schizophrenia and alcohol abuse.
3. Claimant testified his seizures began five years ago and that his last seizure was three months prior to the hearing.
4. Claimant testified that he hears voices at night when he is not taking Seroquel.
5. Claimant testified that he has not had any alcohol for the past three (3) years.
6. Claimant testified that he has the following physical limitations:  
Sitting – 1-2 hours.
7. Claimant testified that he takes the following meds:
  - a) Dilantin – for seizures
  - b) Gadapentin 300 mg
  - c) High blood pressure medication
  - d) Cholesterol pill
  - e) Risperdol
  - f) Seroquel
8. Claimant is 5'9" tall and weighs 195 pounds.
9. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
10. Claimant is 43 years of age.
11. Claimant completed the 11<sup>th</sup> grade in high school. Claimant also completed a training course in welding.
12. Claimant does not read well. Claimant cannot add and subtract numbers.
13. Claimant has previous employment experience as a janitor.
14. Claimant testified that he needs help cooking and grocery shopping. Claimant testified that he has a tendency to burn food.
15. Claimant testified that he likes to play solitaire.
16. The Department found that Claimant was not disabled and denied Claimant's application on 10/23/07.
17. Medical records examined are as follows:

[REDACTED], 5/21/08, in part (Exhibit F)

HISTORY OF PRESENT ILLNESS: Low back pain, at present intense pain that occasionally radiates into the lower extremities. Occasionally he needs a cane because of the pain. Going up and down the stairs is also difficult for him.

- Bad seizures and schizophrenia

PHYSICAL EXAMINATION: Higher functions – He could not remember the last three presidents. He could not do serials 7's. Tenderness of non-specific nature at L1 to L4 posteriorly. Spasm noted during standing at these levels. Straight leg raising, Faber's and Gaenslen's and femoral stretch tests were all negative. Squatting was possible but then he landed on his buttocks on the floor.

[REDACTED], 5/21/08, in part (Exhibit G)

CLINICAL INTERVIEW: He could not remember when nor how long he was married or divorced. Two years ago had seizure, hit his head and had bleed in his brain. He has had trouble remembering things since then.

Full Scale IQ of 48.

“No prior test results were enclosed with his invoice for my review, so I have no other test date with which to compare today's findings. I have no independent confirmation of the history of “brain bleed” that he gives. The history he gives of getting fired from his job for drinking certainly raises a red flag in my mind in terms of the accuracy of the history he gives about the brain injury and makes me wonder about alcohol abuse as a more significant problem for him, in the absence of medical records confirming the brain injury. Thus, in the absence of prior results, I cannot determine today's results to necessarily reflect a valid and accurate measure of his current intellectual, academic and emotional functioning.”

DIAGNOSES: Possible cognitive disorder, possibly secondary to brain hemorrhage and/or alcohol abuse. Intellectual and academic functioning in mildly to moderately retarded range today, but results are of unclear validity as discussed above in light of questions about the validity of his presentation.

[REDACTED] Report, 5/18/07, in party (Exhibit 1, p. 4, 4A)

HISTORY OF IMPAIRMENTS: HTN, Bipolar, Anxiety, Panic Attack, Seizure

PHYSICAL LIMITATIONS: Lifting up to 10 lbs. frequently, Standing or walking less than 2 hrs in an 8 hour day.

MENTAL LIMITATIONS: Limited in comprehension, sustained concentration, reading/writing, memory, and following simple directions due to Bi-polar with anxiety attach. Also unable to read.

, 8/4/07- 8/5/07, in part (Exhibit 1, pp. 8-18).

Patient presented with history of schizophrenia, closed head injury due to fall, and Etoh abuse following seizure. Patient denies any EToh abuse for last 1 ½ years.

#### 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.

### **1. Current Substantial Gainful Activity**

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. “Substantial work activity” is work activity that involves doing significant physical or mental activities. 20 CFR 416.972(a). “Gainful work activity” is work that is usually done for pay or profit, whether or not a profit is realized. 20 CFR 416.972(b). Generally if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that she has the demonstrated ability to engage in SGA. 20 CFR 416.974 and 416.975. If an individual engages in SGA, she is not disabled regardless of how severe her physical and mental impairments are and regardless of her age, education and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

In this case, Claimant cannot remember when he last worked. Under the first step, however, the Claimant is not currently engaging in substantial gainful activity. Therefore, the Claimant is not disqualified from receipt of disability benefits under Step 1.

### **2. Medically Determinable Impairment – 12 Months**

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 F.2d 860, 862 (6<sup>th</sup> Cir. 1988); *Farris v Sec’y of Health & Human Servs*, 773 F.2d 85, 90 (6<sup>th</sup> Cir. 1985).

In this case, Claimant suffers from seizures, schizophrenia, low back pain, closed head injury and possible cognitive disorder including limitations in comprehension, sustained concentration, reading/writing, memory and following simple directions. These diagnoses are all sufficiently severe to meet the intent of the regulations.

However, the medical records also establish alcohol abuse. 20 CFR 416.935 requires a determination of whether 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). The evaluation used is as follows:

- (1) Determine which physical and mental limitations would remain if Claimant stopped using drugs or alcohol.
- (2) If remaining limitations would not be disabling, drug addiction or alcoholism is a contributing factor material to a determination of disability.
- (3) If remaining limitations are disabling independent of drug addiction or alcoholism, substance abuse is not a contributing factor material to a determination of disability.

Claimant's cognitive disorder and mental limitations would still exist if Claimant were no longer drinking as would the back pain and the schizophrenia. Since the limitations from these impairments remain disabling, the alcohol addiction is not a contributing factor material to a determination of disability. Therefore, it is necessary to continue to evaluate the Claimant's impairments under step three.

### **3. Listed Impairment**

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 20 CFR Part 40, Subpart P, Appendix 1 (20 CFR 416.920(d), 416.925 and 416.926). Based on the hearing record, the undersigned finds that the Claimant's medical record does not support a finding that the Claimant's physical and mental impairment are "listed impairment(s)" or equal to a listed impairment. 20 CFR 416.920(a) (4) (iii). Appendix I, Listing of Impairments discusses the analysis and criteria necessary to a finding of a listed impairment. The Listing 12.03 *Schizophrenic, Paranoid or Other Psychotic Disorders* and 12.05 *Mental Retardation* were reviewed.

While Claimant does have a score 48 on a full scale IQ, [REDACTED], who performed the IQ examination, did not believe that it was a valid presentation. The 12.05 listing for mental

retardation requires a valid IQ examination. Therefore, Claimant's impairments do not meet the severity of the listings. An analysis of Claimant's RFC must be evaluated under steps four and five.

#### **4. Credibility**

One of the examining physicians has questioned Claimant's credibility. In determining the credibility of the individual's statements, the adjudicator must consider the entire case record, including the objective medical evidence, the individual's own statements about symptoms, statements and other information provided by treating or examining physicians or psychologists and other persons about the symptoms and how they affect the individual, and any other relevant evidence in the case record. An individual's statements about the intensity and persistence of pain or other symptoms or about the effect the symptoms have on his or her ability to work may not be disregarded solely because they are not substantiated by objective medical evidence. SSR 97-6p.

Generally, more weight is given to treating sources. 20 CFR 416.927(4)(d)(2). However, under 20 CFR 416.927(f), administrative law judges are required to consider findings of fact by State agency medical and psychological consultants and other program physicians and psychologists about the existence and severity of an individual's impairment(s), including the existence and severity of any symptoms. If the case record includes a finding by a State agency medical or psychological consultant or other program physician or psychologist on the credibility of the individual's statements about limitations or restrictions due to symptoms, the adjudicator must consider and weigh this opinion of the nonexamining source and must explain the weight given to the opinion in the decision. SSR 96-7p.

Claimant has presented medical evidence from a treating physician, [REDACTED], as well as two examinations by physicians hired by the Department. [REDACTED], a Department physician, performed a psychological examination and questioned the validity of Claimant's presentation based on a lack of documentation of Claimant's previous brain injury. [REDACTED] also questioned whether Claimant's mental impairments were caused by his previous alcohol abuse rather than a brain bleed.

This administrative law judge has already addressed the issue of alcohol abuse. Even now that Claimant is no longer drinking, his mental impairments remain. The cause of the mental impairments is not as important as the fact that they are still disabling. Furthermore, according to SSR 96-7p, the lack of objective medical evidence of Claimant's previous brain bleed should not cause the examining physician to disregard Claimant's statements about his ability to work. Therefore, the undersigned will consider Claimant's mental limitations in considering his residual functional capacity.

#### **4. Ability to Perform Past Relevant Work**

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 one can do in a work setting. RFC is the most one can still do despite limitations. All the relevant medical and other evidence in the case record applies in the assessment.

In this case, the Claimant exhibits mental limitations. For example, Claimant is limited in comprehension, sustained concentration and following simple directions as well as reading and writing. In fact, Claimant's intellectual and academic functioning is in the mildly to moderately

retarded range. Claimant also has schizophrenia and is generally anxious. Claimant has also presented evidence of physical limitations including seizures and radiating low back pain that limits his ability to go up and down stairs, standing, lifting and walking.

Claimant's prior employment included experience as a janitor which is considered unskilled and requires a medium exertional level. Claimant has been placed on lift/stand/walk physical limitations of 2 hours in an 8 hour work day and no lifting over 10 lbs. by his treating physician, [REDACTED]. Therefore, the undersigned finds the Claimant currently limited to sedentary work. Claimant is, therefore, unable to return to his past relevant work as a janitor. Evaluation under step five will be made according to the law.

#### **5. Ability to Perform Other 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 N.W.2d 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 at the level of sedentary work. Sedentary work is described as follows:

*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.

20 CFR 416.967(a). Claimant's most recent doctor recommended physical limitation and dictates that Claimant is limited to lifting less than 10 lbs throughout the day and standing/walking less than two (2) hours per eight hour day. Therefore, Claimant would be limited to sedentary work. 20 CFR 416.967.

Claimant at forty-three is considered a *younger individual*. 20 CFR 404, Appendix 2 to Subpart P, Rule 201.00(c).

For individuals who are under age 45, age is a more advantageous factor for making an adjustment to other work. It is usually not a significant factor in limiting such individuals' ability to make an adjustment to other work, including an adjustment to unskilled sedentary work, even when the individuals are unable to communicate in English or are illiterate in English.

Nevertheless, a decision of "disabled" may be appropriate for some individuals under age 45 who do not have the ability to perform a full range of sedentary work. However, the inability to perform a full range of sedentary work does not necessarily equate with a finding of "disabled." Whether an individual will be able to make an adjustment to other work requires an adjudicative assessment of factors such as the type and extent of the individual's limitations or restrictions and the extent of the erosion of the occupational base. It requires an individualized determination that considers the impact of the limitations or restrictions on the number of sedentary, unskilled occupations or the total number of jobs to which the individual may be able to adjust, considering his or her age, education and work experience, including any transferable skills or education providing for direct entry into skilled work.

In the present case, the Department has failed to provide vocational evidence which establishes that Claimant has the residual function capacity for substantial gainful activity and that, given Claimant's age, education and work experience, there are significant numbers of jobs

in the national economy which the Claimant could perform despite Claimant's limitations. Given Claimant's mental and physical limitations, his low IQ, inability to read and write or follow simple instructions, the undersigned finds that Claimant would not be able to find a sedentary position within the available job pool. Accordingly, the Administrative Law Judge concludes that Claimant is disabled for the purposes of the 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 evidence to support a finding that Claimant's impairment is disabling him under SSI disability standards. This Administrative Law Judge finds the Claimant is "disabled" for purposes of the MA 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 the State Disability Program.

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

Accordingly, The Department is ORDERED to initiate a review of the 7/8/07 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 May 2010.

/s/ \_\_\_\_\_  
Jeanne M. VanderHeide  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: 05/28/09

Date Mailed: 05/28/09

**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 mailing 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.

JV/dj

cc:

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