

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.: 2008-9990

Issue No.: 2009, 4031

Case No.:

Load No.:

Hearing Date:

June 19, 2008

Midland 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 June 19, 2008. The Claimant appeared at the Department of Human Service (Department) in Midland County.

The closure date was waived to obtain additional medical information. The medical information was submitted to the State Hearing Review Team (SHRT) who 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) 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 April 10, 2007 the Claimant applied for MA-P and SDA.
- (2) On September 20, 2007 the Department denied the application: and on August 21, 2008 the SHRT denied the application finding evidence for the ability to perform medium unskilled work under Vocational Rule 203.13.
- (3) On November 21, 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-seven years of age.
- (5) Claimant completed grade 12 and two years of college; and can read and write English and perform basic math.
- (6) Claimant last worked in 2007 as a gas stations clerk, musician/performer on piano and drums.
- (7) Claimant has alleged a medical history of depression with suicide attempts the last in December 2007, neuropathy right foot/left leg with cold/numb toes, diabetes mellitus.
- (8) August 2007, in part:

PSYCHOLOGICAL EVALUATION: Presently taking medications for high blood pressure, high cholesterol, glucophage and Lambasol prescribed by [REDACTED] Recent counseling through community mental health services but no present treatment.

States enjoys playing music several different instruments, enjoys working on automobile engines and making clothing. Awakens early to use the computer and takes a bike ride and sees friends and goes shopping. Does most of household chores.

Presents as very anxious, in contact with reality, grandiose to low self-esteem, seems dependent on other people, marginal motivation to change and marginal insight. Speaks very fast and uses language well and possess adequate intelligence. But thoughts are not well organized. Proud of 54 pound weight loss and no reported sleep problem. DIAGNOSES: Axis I: Anxiety disorder, NOS; dysthymic disorder, Axis II: Borderline personality disorder. [REDACTED]

[REDACTED]. Department Exhibit (DE) 1, pp. 140-153

(9) January and July 2008, in part:

January: To ER with chest pain. Had cardiac cauterization in 2007 showed diffuse coronary artery disease, echo ejection fraction was 60%. Has not been taking medications for six months. Occasional use of alcohol and marijuana. PHYSICAL EXAMINATION: General Appearance, EENT, Neck, Respiratory, CVS, Abdomen, Skin, Extremities, Neuro/Psych: [All within normal limits.] EKG normal. Troponins normal. Discharged in stable condition to home and instructed to get/take his medications, stop smoking, avoid heavy lifting until follow up with doctor. DE N, pp. 9-21.

July: Independent Medial Exam: C/O neuropathy and leg pain. Has been diabetic for four years. Medications: glucophage and OTC pain medications. States he does not drink but smokes. PHYSICAL EXAMINATION: HT: 67", WT: 164, BP 180/100. Awake, alert, orientated. No vision right eye. Remaining cranial nerves are intact. Chest, Lungs, Abdomen, Extremities: [Within normal limits.] Except: loss of pinprick vibrations and ankle reflexes are depressed. Positive Rombergs. Bilateral arthritic changes with minor grip strength weakness. Trouble with picking up coins and buttoning. Ambulates, walks heels/toes all without need of cane.

Can occasionally lift up to 50 pounds, stand and/or sit 2-hours in 8 hour day, sit about 6 hours in 8-hour day. Use of both arms/hands for simple grasping, fine manipulating, no use of either feet/legs for operating foot controls. No mental limitations. Can meet own need at home. [REDACTED]. DE N, pp. 1-5

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 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. See finding of facts 8-9.

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 is a “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 anxiety disorder; diabetes mellitus type II, coronary artery disease, high cholesterol and hypertension, and some loss of sensation/weakness in

bilateral hands and feet. But the medical records report that the Claimant has been non-compliant with prescribed medical treatment; not taking prescribed medication, and continuing to smoke cigarettes, marijuana and drink alcohol. See finding of facts 8-9.

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 20 CFR 416.930 which discusses the "Need to follow prescribed treatment" if the treatment can restore ability to work.

- (a) What treatment you must follow. In order to get benefits, you must follow treatment prescribed by your physician if this treatment can restore your ability to work, or, if you are a child, if the treatment can reduce your functional limitations so that they are no longer marked and severe.
- (b) When you do not follow prescribed treatment. If you do not follow the prescribed treatment without a good reason, we will not find you disabled or blind or, if you are already receiving benefits, we will stop paying you benefits.
- (c) Acceptable reasons for failure to follow prescribed treatment. We will consider your physical, mental, educational, and linguistic limitations (including any lack of facility with the English language) when determining if you have an acceptable reason for failure to follow prescribed treatment. The following are examples of a good reason for not following treatment:
 - 1) The specific medical treatment is contrary to the established teaching and tenets of your religion.
 - (2) The prescribed treatment would be cataract surgery for one eye when there is an impairment of the other eye resulting in a severe loss of vision and is not subject to improvement through treatment.
 - (3) Surgery was previously performed with unsuccessful results and the same surgery is again being recommended for the same impairment.
 - (4) The treatment because of its enormity (e.g. open heart surgery), unusual nature (e.g., organ transplant), or other reason is very risky for you; or
 - (5) The treatment involves amputation of an extremity, or a major part of an extremity.

There was no evidence of good reasons for failing to follow prescribed treatment. Medications are available at low cost many places in Michigan. But further, the Claimant was not truthful at hearing by denying substance use history. This damages his credibility. Thus, the undersigned cannot find the Claimant disabled pursuant to 20 CFR 416.930 because the hearing record and the Claimant's medical records do not establish good cause reasons for failing to follow prescribed treatment that would restore him to work under Appendix 1 of Subpart P of 20 CFR, Part 404.

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 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 do not establish ambulation difficulties or dysfunction of the upper or lower extremities except minor sensation loss and arthritic changes to both hands. The Claimant told [REDACTED]

States enjoys playing music several different instruments, enjoys working on automobile engines and making clothing. Awakens early to use the computer and takes a bike ride and sees friends and goes shopping. Does most of household chores.

At the hearing the Claimant testified he could cut grass and play the piano. Past relevant work was gas stations clerk. [REDACTED] opined the Claimant could not pick up coins very well. This medical opinion is not consistent with Claimant's stated ability to play the piano and other instruments. Thus the undersigned finds [REDACTED] evaluation not credible to making

this decision. The undersigned finds the Claimant can return to past work as a gas stations clerk. But under step five, the Claimant is still 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 physical 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.

(c) However, for individuals of advanced age who can no longer perform vocationally relevant past work and who have a history of unskilled work experience, or who have only skills that are not readily transferable to a significant range of semi-skilled or skilled work that is within the individual's functional capacity, or who have no work experience, the limitations in vocational adaptability represented by functional restriction to light work warrant a finding of disabled. Ordinarily, even a high school education or more which was completed in the remote past will have little positive impact on effecting a vocational adjustment unless relevant work experience reflects use of such education.

(d) Where the same factors in paragraph (c) of this section regarding education and work experience are present, but where age, though not advanced, is a factor which significantly limits vocational adaptability (*i.e.*, closely approaching advanced age, 50-54) and an individual's vocational scope is further significantly limited by illiteracy or inability to communicate in English, a finding of disabled is warranted.

Claimant at fifty-seven is considered *advanced age*; a category of individuals age 55 and over. 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 202.07, for advanced age, age 55 and over; education: high school graduate or more, does not provide for direct entry into skilled work; previous work experience, skilled or semi-skilled—skills transferable [Musician—Performer]; the Claimant is “not disabled” per Rule 202.07.

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 medical evidence to support a finding that Claimant's impairments meet the disability requirements under SSI disability standards, or prevents return to past relevant work or other 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 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: 04/21/09

Date Mailed: 04/21/09

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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