

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. 2009-106
Issue No. 2009; 4031
Case No: ██████████
Load No. ██████████
Hearing Date:
December 1, 2008
Oakland 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, the Claimant and his representative ██████████ appeared at a hearing held on December 1, 2008 at the Department of Human Services (Department) in Oakland County.

The closure date was waived to obtain additional medical information; and new records were received. State Hearing Review Team (SHRT) reviewed and denied the application. No additional medical records were received from the representative; and the record closed. 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), retroactive MA-P for the months of August, September and October 2007 and State Disability Assistance (SDA) program?

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 November 29, 2007 the Claimant applied for MA-P and SDA.
- (2) On March 5, 2008 the Department denied the application; and on February 10, 2009 the SHRT denied the application finding the medical records did not establish a mental/physical impairment that significantly limited ability to perform basic work activities.
- (3) On May 29, 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-six years of age.
- (5) Claimant completed grade 11; and can read and write English and perform basic math.
- (6) Claimant last worked in 2005 part-time as a store cashier, and full-time at his mother's party store business with a history of running the business and managing employees for 3 years.
- (7) Claimant has alleged a medical history of hospitalization for dehydration and fatigue with a diagnosis of HIV now treated with medications.
- (8) Date of last examination [REDACTED], in part:

History of diarrhea and fatigue.
CURRENT DIAGNOSIS: HIV.
NORMAL EXAMINATION AREAS: HEENT; Respiratory;
Cardiovascular, Abdominal, Musculoskeletal, Neuro, Mental.
ABNORMAL: General: emaciated appearance.
CLINICAL IMPRESSION: Improving. CD4 157.

PHYSICAL LIMITATIONS: Limited in Lifting/carrying; stand and/or walk; sit; use of both hand/arms; use of both feet/legs. Can meet own needs in home.

MENTAL LIMITATIONS: None. Medications: Kaletia, Truadra. [REDACTED]. Department Exhibit (DE) 1, pp. 15-16.

(9) [REDACTED], in part:

HISTORY: Two years ago [REDACTED] hospitalized for dehydration, anemia and was diagnosed to have HIV; and put on medication. In [REDACTED] his CD4 cell count was up to 209. States appetite is poor. But states gained 3 pounds and bowels are regular. Gets regular heartburn but does not take medication and lasts two hours. No history of GI bleeds. Gets pains in muscles of thigh but doesn't affect any of his daily activities; and he can walk for thirty minutes and climb stairs. States suffering from depression but no treatment including, not taking medication. States memory poor but he can remember information and do simple calculations. No weakness, dizziness, tingling, numbness or involuntary movements, diabetes or thyroid problem. Drinks alcohol moderately and smokes cigarettes.

PHYSICAL EXAMINATION: HT 66-67", WT 140, BP 100/60, Vision without glasses right 20/40, left 20/100. HEENT, Neck, CVS, Chest, Abdomen, skin, Extremities, Spine, Bones & Joints, Nervous System: [All within normal limits.] Except crepitus in both knee joints and ambulates fairly well on tiptoe and heel and tandem gait; and can squat and arise from squatting. IMPRESSION: No complications from HIV infection. DE N, pp. 1-19.

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 2005 part-time in his mother’s store. 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).

In this case, the Claimant has presented medical evidence of physical impairments that would affect basic work activities. There were no medical records establishing mental impairments affecting basic work activities. Except the Claimant stated he was depressed but is not in treatment or taking anti-depressant medication.

The medical evidence has established that Claimant has a physical impairment that has more than a minimal effect on basic work activities. The medical records have established the impairments have lasted continuously for 12 months and are expected to last. 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.

Appendix I, Listing of Impairments (Listing) discusses the analysis and criteria necessary to a finding of a listed impairment. Under Appendix 1 of Subpart P of 20 CFR, Part 404, Listing 14.08, *Immune System* was reviewed for resistance to treatment, recurrent, disseminated, and significantly involuntary weight loss. CD4 tests results indicate the claimant was responding to treatment. In [REDACTED]; and in [REDACTED] CD4 was 157. There were no medical records submitted after [REDACTED] measuring CD4. On [REDACTED], independent medical exam made findings of normal for all body functions in clinical exam. In the examiner's opinion, there was weight gain, memory for information and calculations; and found to have no symptoms/complications of HIV. See Finding of Fact 9.

In this case, this Administrative Law Judge finds the Claimant is not disabled at the third step for purposes of the Medical Assistance (MA) program. 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) prevents 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 testified to fatigue, sitting for 30 minutes, and standing for 20-30 minutes, walking one block and lifting up to 10 pounds. But the claimant testified to not being able to return to full-time work at the store. Due to the medical facts and testimony in this case; 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 functional capacity," defined simply as "what can you still do despite you 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 limitations.

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 by impairments 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 forty-six is considered a *younger individual*; a category of individuals in age group 45-49 when age is a lesser advantage factor for making adjustment to other work; Rule

201.19; education: limited or less; previous work experience: skilled or semi-skilled—skills not transferable; Claimant is “not disabled” per Rule 201.19.

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. 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: March 4, 2009

Date Mailed: March 9, 2009

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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