

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: 2009-34525
Issue No: 2009, 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 4, 2009
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted on November 4, 2009 pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department on July 29, 2009. The undersigned Administrative Law Judge has written the hearing decision after review of the evidence in the record. At the hearing, the Claimant was present and testified. Patrica Colvin, MCW, 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 applied for SDA and MA as of February 27, 2009.
2. Claimant is 5'8.5" tall and weighs 166 pounds.

3. Claimant is right handed.
4. Claimant is 40 years of age.
5. Claimant's impairments have been medically diagnosed as depression, suicidal ideation and psychiatric disorder not otherwise specified.
6. Claimant's physical symptoms are shortness of breath.
7. Claimant's mental symptoms are memory problems (Claimant will not remember what went on at hearing), poor concentration (other thoughts take over), panic attacks (one time only in March, 2009 – heart rate goes up, Claimant gets light headed, nervous and edgy), anxiety attacks (off/on but has not had one in awhile (edgy, nervous and does not want to be bothered with people, claimant does not want to hear questions from others), crying spells (twice a month), confusion (sometimes), anger, nervousness, decreased appetite, weight loss of 26 lbs since last July, sleep disturbances (better with Seroquel), fatigue especially in the morning, suicidal thoughts (last in April, 2009), guilt feelings, hallucinations and paranoia.

Claimant is currently treating with a psychiatrist monthly.

8. Claimant takes the following prescriptions:
 - a) Seroquel 400 mg – sleeping pill
 - b) Loramain 80 mg – keep him calm
9. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
10. Claimant has a GED education. Claimant is currently attending [REDACTED] to study heating/cooling. Claimant is attending 3 days per week which is considered full time. Claimant started [REDACTED] but has missed several days due to illness. The program will take 2 ½ years to complete.
11. Claimant is able to read/write/perform basic math skills.
12. Claimant last worked at a car wash 14 or 15 years ago. Claimant's job duties included standing when busy, bending/stooping.
13. Claimant has prior employment experience as roofing (lifting 50 lbs.), home improvement (lifting up to 50 lbs.), and demolition of residential homes (lifting up to 100 lbs). All of these jobs were held over 15 years ago.
14. Claimant performs household chores such as washing dishes, vacuuming, doing laundry, cleaning bathrooms, and taking the garbage out.

15. Claimant testified that he thinks he could do office work, but it would be easier if the people he works around have good chemistry. Claimant then admitted that he gets irritated and will explode at people.
16. The Department found that Claimant was not disabled and denied Claimant's application on 11/14/08.
17. The Department testified that Claimant appeared tense, had repetitive motion with his hands and that his eyes were looking off to the side.
18. Medical records examined are as follows, in part:

██████████ - Psychiatric Examination Report, (Exhibit 1, p. 7-8)

GENERAL OBSERVATIONS: CI is accompanied by his girlfriend. He is punctual, neatly dressed, speed, mannerisms, hygiene all appropriate.

HX: CI reports history of depression for past 2-3 years and reports he has problems getting along with other people and has anger problems. No psychiatric hospitalization. Current medical is Seroquel.

CURRENT TX: CI is to be seen monthly by psychiatrist.
Psychiatric Disorder NOS
GAF 50

██████████ Mental RFC Assessment (Exhibit 1, pp. 9-10)

Markedly limited as follows:

1. The ability to sustain an ordinary routine without supervision
2. The ability to make simple work-related decisions.
3. The ability to ask simple questions or request assistance.
4. The ability to be aware of normal hazards and take appropriate precautions
5. The ability to set realistic goals or make plans independently of others

██████████ IME Mental Residual Functional Capacity Assessment (Exhibit B1-3)

The symptoms presenting in the 3d party ADLS are not so severe that the claimant is not able to do simple, sustained unskilled tasks with persistence based on the evidence in the file.

Not significantly limited as follows:

1. The ability to remember locations and work-like procedures.
2. The ability to understand and remember very short and simple instructions.

3. The ability to carry out very short and simple instructions.
4. The ability to maintain attention and concentration for extended periods.
5. The ability to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances.
6. The ability to sustain an ordinary routine without special supervision
7. The ability to make simple work-related decisions.
8. The ability to complete a normal work day and workweek without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods.
9. The ability to ask simple questions or request assistance.
10. The ability to accept instructions and respond appropriately to criticism from supervisors
11. The ability to get along with coworkers or peers without distracting them or exhibiting behavioral extremes.
12. The ability to maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness.
13. The ability to be aware of normal hazards and take appropriate precautions.
14. The ability to travel in unfamiliar places or use public transportation.
15. The ability to set realistic goals or make plans independently of other.

██████████ ER (Exhibit 1, pp. 11-12, Exhibit 2)

Pt brought in by police stating “lately I have been feeling like killing myself”. Pt will be discharged with Rx for Albuterol. Pt was angry, hostile and uncooperative. Pt brought in by police stating “lately I have been feeling like killing myself.” He states he has been feeling like that for two years. He is currently in police custody. Pyschiatric Evaluation and discharged with Albuterol.

DX: Adjustment disorder, NOS,

██████████ ER visit (Exhibit 2)

Seen for urethritis.

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 CFR 416.905

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, under the first step, the Claimant last worked 14 years ago. 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)

An impairment must last, or be expected to last, for a continuous period of at least 12 months. 20 CFR 416.909.

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

In this case, the Claimant has presented medical evidence showing depression, suicidal ideation and psychiatric disorder NOS. It is expected that Claimant’s impairment will last more than twelve months. The medical evidence has established that Claimant has a Medical impairment that has more than a minimal effect on basic work activities. Furthermore, while Claimant reported asthma this Administrative Law Judge does not find any medical evidence of a physical impairment in the record other than Claimant’s testimony. 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 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 physical and mental 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 discusses the analysis and criteria necessary to a finding of a listed impairment. The Listing 12.04 *Affective Disorder* was reviewed. In this case,

this Administrative Law Judge finds the Claimant is not presently disabled at the third step for purposes of the Medical Assistance (MA) program because the medical evidence reviewed does not show that the physical impairments meet the intent or severity of the listings. Sequential evaluation under step four or five is necessary. 20 CFR 416.905.

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 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.

Claimant has presented medical evidence showing that he suffers from depression, suicidal ideations and psychiatric disorder not otherwise specified. Claimant testified that he has trouble with asthma but did not present any medical records supporting asthma impairment. Therefore, only the mental limitations are taken into consideration in this opinion.

Claimant's prior employment includes working at a car wash (light, unskilled work). Claimant's previous employment over fifteen years before included roofing, doing home improvement and demolishing residential homes (all medium to heavy, unskilled work). Claimant was found to be markedly limited in five of twenty categories by his treating psychiatrist. Claimant was found not significantly limited in the majority of categories by the Independent Medical Psychiatric examiner. Claimant testified that at home he is able to perform household chores such as washing dishes, vacuuming, doing laundry, cleaning bathrooms and

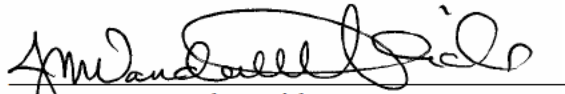
taking the garbage out. The undersigned, therefore, finds that Claimant is capable of doing simple, unskilled jobs. Furthermore, since there are no physical impairments, the Claimant is not under any current lifting restrictions. The administrative law judge finds that Claimant is capable of performing his past work. As Claimant's impairments do not prevent him from performing past relevant work, Claimant is considered not disabled under the fourth step. It is the finding of the undersigned, based upon the medical data and hearing record that Claimant is "not disabled" at the fourth 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 impairment has disabled him under SSI disability standards. This Administrative Law Judge finds the Claimant is not "disabled" for purposes of the SDA and MA programs.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Department was correct in determining that the claimant was not disabled for the purposes of the MA / SDA program and IT IS ORDERED that the Department's decision in this matter is AFFIRMED.



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

Date Signed: 02/01/10

Date Mailed: 02/02/10

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:

