

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: 2009-14734

Issue No: 2009, 4031

Case No:

Load No:

Hearing Date:

May 28, 2009

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted by telephone hearing on May 28, 2009 pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department. At the hearing, the Claimant was present and testified. [REDACTED] of [REDACTED] [REDACTED] was present and represented Claimant. Cheryl Brooks, 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") and State Disability Assistance ("SDA") programs.

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 SDA and MA in October of 2008.

2. Claimant's impairments have been medically diagnosed as CLPD, Arthritis in left knee, Arthritis of hips, Arthritis of wrists and right hand, gastritis, hypertension, Hepatitis B & C, depression, and bunion on foot.
3. Claimant's physical symptoms are pain in lower legs, thighs, hips and hands, difficulty sleeping, pins and needles, severe coughing, shortness of breath, pain in chest when sleeping and pain when walking.
4. Claimant's mental symptoms are difficulty remembering, problems concentrating, anxiety attacks, crying spells, confusion, nervousness, sleep disturbances, fatigue, guilt feelings, and hallucinations (once a week).
5. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
6. Claimant is 6'0" tall and weighs 202 pounds.
7. Claimant is right handed.
8. Claimant is 60 years of age.
9. Claimant has a 12th grade education. Claimant has also had additional training for cable installation and auto body repair.
10. Claimant is able to read, write, and perform basic math skills.
11. Claimant last worked in 2003 at [REDACTED] as a press operator helper. This job required lifting up to 100 lbs. as well as bending and stooping. Claimant was let go from this position because Claimant was too slow.
12. Claimant has prior employment experience working at a packaging company on the line. This job involved wrapping. There was no lifting; however, Claimant was required to stand all day long.
13. Claimant testified to the following physical limitations:
 - Sitting: 30 minutes
 - Standing: 5 minutes
 - Walking: ½ block (claimant uses a cane and knee brace, and low back brace)
 - Bend/stoop: bothers lower back
 - Lifting: can lift gallon of milk
 - grip/grasp – both baby fingers are broken. Can grip/grasp with other fingers.
14. Claimant is on the following medications:
 - a) Lexapro 10 mg

HISTORY: Client states long term history of depressive and isolative behaviors. Client reports hopelessness, low self-work, decreased energy, anxiety, persistent worrying, insomnia, racing thoughts and difficulty concentrating.

MENTAL STATUS EXAM: Affect-appropriate, mood-depressed. Client exhibits very guarded-protective manner

DAILY FUNCTIONING: Client has somewhat limited ability to function independently. It is difficult for him to concentrate for extended periods of time, some confusion recalling.

DIAGNOSES: Major depressive disorder recurrent with/out psych.

[REDACTED] Assessment (Exhibit 1, pp. 12- 13)

MENTAL RESIDUAL FUNCTION CAPACITY

ASSESSMENT: Markedly limited as follows:

1. The ability to remember locations and work like procedures
2. The ability to understand and remember detailed instructions.
3. The ability to carry out detailed 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 with customary tolerances.
6. The ability to sustain an ordinary routine without supervision.
7. The ability to work in coordination with or proximity to others without being distracted by them.
8. The ability to work in coordination with or proximity to others without being distracted by them.
9. The ability to complete a normal workday without interruptions from psychologically based symptoms and to perform at a consistent basis without an unreasonable number and length of rest periods.
10. The ability to accept instructions and respond appropriately to criticism from supervision
11. The ability to get along with coworkers or peers without distracting them or exhibiting behavior extremes.
12. The ability to respond appropriately to change in the work setting.
13. The ability to travel in unfamiliar places or use public transportation.

14. The ability to set realistic goals or make plans independently of others.

██████████ Internal Medicine Medical Examination Report (Exhibit 1, pp. 7-9)

PHYSICAL LIMITATIONS:

- Lifting less than 10 lbs occasionally
- Stand/walk less than 2 hours/day
- No repetitive actions in legs or hands/arms

MENTAL LIMITATIONS: Limited in memory and social interaction “May need psychotropics”.

Patient was advised to follow up with infection disease for Hepatitis B, C treatment. Patient was started on monthly B12 injections.

██████████ Adult Comprehensive Assessment (Exhibit A)

Patient presents with depressed mood, decreased energy and nervousness about where he will live and what will happen, insomnia and racing thoughts. 29 year history of alcohol dependence which has led to chronic homelessness and loss of support.

██████████ Hospital Admission (Exhibit 1, pp. 15 – 27)

COMPLAINT: chest pain, numbness and tingling in extremities and abdominal pain, elevated liver function tests

DOPPLER: There is mild concentric left ventricular hypertrophy. The transmitral spectral Doppler flow pattern is suggestive of impaired LV relaxation. The ejection fraction is 45%.

██████████ Psychiatric Evaluation (Exhibit 2, pp. 1-3)

MENTAL TREND: The patient said “Sometimes I hear people, I be sleeping and somebody is talking to me and I get up sweating.”

DIAGNOSES: Rule out antisocial traits or personality, GAF 55 to 60

██████████ Internist Evaluation (Exhibit 2, pp. 4-5)

Patient was shot twice in the leg in the 1980s. One bullet was not removed. He complains that his right leg still hurts when standing or walking for relative short periods of time. He is also prone to charley horse on the right leg. For a long time he has been somewhat nervous and anxious. Occasionally he gets slightly shaky.

There is minimal weakness on the right leg with minimal right foot drop but restriction is intact on the right lower limb. He walks with minimal limping on the right side but is able to walk without assisting devices.

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, under the first step, the Claimant last worked in 2003. 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 (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 from medical providers showing CLPD; Arthritis in left knee, hips, wrist and hand, hypertension Hepatitis B&C, and depression. Claimant also testified to physical limitations in terms of sitting, standing, walking and lifting which are supported by his physicians. Furthermore, Claimant provided evidence of mental limitations. The medical evidence has established that Claimant has physical and mental impairments that have more than a minimal effect on basic work activities; and Claimant’s impairments have lasted continuously for more than twelve months. 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 Listings 12.03 *Schizophrenic, Paranoid and Other Psychotic Disorders:* and 12.04 *Affective Disorders* were 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 and/or mental impairments meet the intent or severity of the listings. While Claimant has a Psychiatric Examination Report indicating fairly significant limitations, the undersigned notes that this report was filled out by a counselor, or MSW, not a psychiatrist, so it is given limited weight. 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 been placed on physical limitations by his treating internist of lifting 10 lbs occasionally and standing/walking less than 2 hours per day. In addition, the internist indicated that Claimant would be unable to perform any repetitive actions with his arms or legs. Accordingly, Claimant would be limited to sedentary work. Claimant's prior employment, based

on his testimony of his job duties, would be considered unskilled and medium to heavy in exertional level as it required lifting and walking/standing and bending/stooping a significant portion of the day. Based on this information the undersigned finds the Claimant is unable to return to past relevant work in any of the above mentioned prior occupations. 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 or below the limits of sedentary as sedentary work requires "good use of hands and fingers for repetitive hand-finger actions". 20 CFR 416.967 and Claimant's internist indicated that Claimant would not be able to perform repetitive hand actions.

Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines 20 CFR 416.967(a) describes sedentary work:

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 sixty years old is considered an individual of *advanced age*; a category of individuals age 55 and over. Considering Claimant's medical limitations, this Administrative Law Judge finds that claimant's impairments render him capable of doing only sedentary work. Given Claimant's age, education, and prior work experience of unskilled work, Claimant is disabled for the purposes of the programs per rule 201.04. 20 CFR 404, Subpart P, Appendix 2, Table 1, Rule 201.4. There is no need to consider Claimant's mental capacity as he is disabled as a matter of law per the sedentary work table.

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 has disabled 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 upon the above findings of fact and conclusions of law, decides that the claimant is medically disabled under the MA program as of the date of application, October 2008, including retroactive benefits to July of 2008.

Therefore the department is ORDERED to initiate a review of the application of October, 2008, if not done previously, to determine claimant's non-medical eligibility. The department shall inform the claimant of the determination in writing. The case shall be reviewed May 29, 2010.

/s/ _____
Jeanne M. VanderHeide
Administrative Law Judge

Date Signed: 6/5/09

Date Mailed: 6/5/09

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

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