

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: 2009-14774  
Issue No: 2009, 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
July 20, 2009  
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted by Administrative Law Judge Jeanne M. VanderHeide on July 20, 2009 pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department on January 26, 2009. At the hearing, the Claimant was present and testified. Monica Hughes, 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") 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 SDA and MA on 5/1/08. Claimant requested MA and SDA retroactive to February, 2008.
2. Claimant is 5' 11" tall and weighs 215 pounds.
3. Claimant is right handed.
4. Claimant is 55 years of age.

5. Claimant's impairments have been medically diagnosed as clinical depression or dysthymic disorder, high blood pressure, angina, gum disease, weak eye sight, chest pain, knee pain and back pain.
6. Claimant's physical symptoms are chest pain, middle back pain (7 or 8) with radiation (pins and needles) into legs, shortness of breath, teeth falling out (only has 7 left), difficulty chewing food, difficulty urinating, pain in gums and constant headaches.
7. Claimant's mental symptoms are memory difficulties, difficulty concentrating, panic attacks, anxiety attacks, occasional crying spells, sleep disturbances, and fatigue.
8. Claimant is not currently treating or taking any prescription medication.
9. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
10. Claimant has a high school education plus 15 credits at Community College.
11. Claimant is able to read, write. Claimant is able to add, subtract and perform very simple multiplication.
12. Claimant last worked in 2003 as a security guard which required him to stand on his feet for up to 8 hours at some jobs. He was also required to constantly walk, bend & stoop, and lift up to 50-100 lbs. depending on the location of the job.
13. Claimant has prior employment experience as a cargo van driver which involved moving and hauling things. Lifting up to 100 lbs. was required.
14. Claimant testified to the following physical limitations:
  - Sitting: 45 minutes (and then back stiffens up)
  - Standing: 15 minutes
  - Walking: 100 yards
  - Bend/stoop: Claimant can stand and stoop but he has stiffness & pain.
  - Lifting: 25 lbs.
  - Grip/grasp: Yes, real stiff.
15. Claimant performs household chores such as washing clothes, cooking, and shopping for his own groceries. Claimant testified that he has difficulty shaving.
16. The Department found that Claimant was not disabled and denied Claimant's application on February 5, 2009.
17. Medical records examined are as follows:

██████████ Psychological IME (Exhibit 4, pp. 1-4)

GENERAL OBSERVATION: He made little eye contact. He looked somewhat paranoid. His hygiene was fair but he had a very bad odor to his breath probably due to bad teeth.

MENTAL STATUS: Self esteem is poor. No tendency to exaggerate or minimize his symptoms. He was tense and he was unusual.

MENTAL TREND/THOUGHT CONTENT: He had difficulty putting sentences together and talked tangentially with a lot of irrelevant details. His sleep is very poor. He is up a day or two and then he sleeps for many days. He said he has obsessive thoughts and always feels bad about his health and is angry at himself for letting a top security officer like himself become what he has become.

EMOTIONAL REACTIONS: His affect was constricted. He was not anxious but appeared to be very angry. He appeared to be suspicious.

DIAGNOSIS/IMPRESSION: Dysthymic Disorder. Panic attacks, nocturnal. Obsessive Compulsive Disorder traits

GAF – 50

██████████ IME (Exhibit 4, pp. 6-11)

HISTORY OF PRESENT ILLNESS: Pain in chest with radiation to his back with last 15 minutes with shortness of breath and sweating. Chest pain 3-4 times a week precipitated by exertion. He gets headaches. Several teeth are loose and need to be extracted. Low back pain that radiates to both legs and hypertension.

PHYSICAL EXAM: His mouth is swollen with several loose teeth and decaying teeth.

ASSESSMENT: He is suffering from mental depression with a flat affect. As to the hypertension, he has mildly elevated blood pressure which has not been treated. He has several loose teeth with decay and problems which needs to be taken care of. There is no evidence of stiffness of his lower back on clinical examination.

██████████ Emergency Room admission (Exhibit 2, pp. 8-16)

Patient came into ER with exertional chest pain and dyspnea. It is associated with disaphoresis. Another major complaint is toothaches and difficulty chewing his food as a result, eating poorly chewed food which is also a contributing problem.

Patient has some difficulty in breathing with walking upstairs or walking in general.

██████████ Internal Medicine IME (Exhibit 2, pp. 5-6)

Patient has angina therefore limiting his ability to perform physical tasks. Physical limitations of lifting less than 10 lbs frequently and stand/walk less than 2 hours in an 8 hour work day.

#### 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 F.2d 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, the Claimant has presented medical evidence from of hypertension, angina and dysthemic disorder (depression). Claimant also testified to physical limitations from angina in terms of sitting, standing, walking and lifting which is supported by one physician.

Furthermore, to be eligible for MA-P, claimant must have a medically determinable impairment, meaning impairment(s) that can be demonstrated by a physical or mental examination, and/or by X-rays. Findings consist of symptoms, signs and laboratory findings. Signs are anatomical, physiological or psychological abnormalities which can be observed apart from statements (or testimony) of claimant which are considered symptoms. (20 CFR 416.928). Either claimant's or another's statements alone are not enough to establish a physical or mental impairment (20 CFR 416.929(a)) and must be supported by medically identifiable signs as explained above. The reason being because symptoms are a person's own private experience and may or may not be caused by a real physical or mental illness. In the subject case, Claimant also made allegations of back pain. However, there are not test results that show evidence of the back

pain and the Independent Medical Examination revealed no evidence of stiffness in the lower back on clinical examination. Therefore, the low back pain is not taken into consideration in this analysis.

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 12.04 *Affective Disorder* and 1.01 *Musculoskeletal 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 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 one can still do despite limitations. All the relevant medical and other evidence in the case record applies in the assessment.

Claimant was placed on exertional limitations as a result of an emergency room visit for chest pain and difficulty breathing upon exertion as follows: “Physical limitations of lifting less than 10 lbs frequently and stand/walk less than 2 hours in an 8 hour work day.”

Claimant’s prior employment, based on his testimony of job duties would have been considered unskilled and medium to heavy in exertional level as both previous jobs (security guard and cargo van driver/mover) required lifting between 50-100 lbs. as well as spending a significant portion of the day standing. Based on this information the undersigned finds the Claimant 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 limited to sedentary work. 20 CFR 416.967.

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 fifty-five years 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, untreated, render him capable of doing only sedentary work. Given Claimant's age, education, and prior work experience of unskilled work along with his untreated condition, Claimant would be disabled for the purposes of the programs per rule 201.04. 20 CFR 404, Subpart P, Appendix 2, Table 1, Rule 201.4.

Claimant is suffering from depression, hypertension and angina. However, Claimant is not treating with any physicians or taking any medication. When asked why, Claimant testified that he does not really trust doctors. The federal 6th Circuit Court of Appeals, in *McKnight v Secretary of Health and Human Services*, 927 Fed.2d. 241, Dec. 1990, decided that a decision regarding disability is to be made in the absence of medical treatment. If the person meets the medical disability standards, then a finding must be made as to whether or not affordable treatment is available to the person that would prevent the impairment from being severe under the regulations. In the present case, Claimant suffers from dysthemic disorder and panic attacks. Claimant was described by the psychologist as angry and suspicious and by another physician as

having a flat affect. This Administrative Law Judge finds that Claimant's mental impairments have affected his ability to obtain proper medical treatment. Claimant is, therefore, disabled pursuant to 20 CFR 404, Subpart P, Appendix 2, Table 1, Rule 201.4.

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.

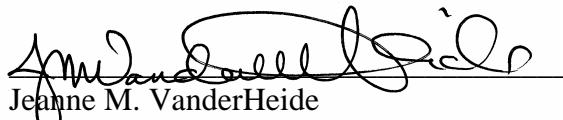
#### DECISION AND ORDER

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 February, 2008.

Therefore the department is ORDERED to initiate a review of the application of 5/1/08 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 November, 2010.

The Medical Social Work Consultant (MSWC), in conjunction with the Medical Review Team (MRT), is to consider the appropriateness of directing claimant to participate in an appropriate mental treatment program. Unless the MSWC determines that claimant has good cause for failure to participate in mandatory treatment, claimant will lose eligibility for SDA and MA-P.

Further, a referral is to be made to Adult Protective Services for an evaluation of possible financial management problems. Specifically, before SDA benefits may be paid to claimant, Adult Protective Services is to assess the appropriateness of a payee or conservatorship for claimant because of prior crack cocaine addiction or other problems which may prevent adequate management or discharge of financial or other personal affairs. See Adult Services Manual, Item 383.

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

Date Signed: 10/26/09

Date Mailed: 10/28/09

**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

2009-14774/JV

cc:

