

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: 2009-16506
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 3, 2009
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan on June 3, 2009. At the hearing, the Claimant was present and testified. Bobbie Thompson, 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 filed for MA on 10/20/08 and requested MA retroactive to July 2008.
2. Claimant is 5'8" tall and weighs 160 pounds.
3. Claimant is right handed.
4. Claimant is 53 years of age.

5. Claimant's impairments have been medically diagnosed as coronary artery disease, previous myocardial infarction, testodynia and bipolar syndrome.
6. Claimant's physical symptoms are chest pains (every night when sleeping – wakes Claimant up 2-3x/ night), shortness of breath, pain in groin area (9 out of 10) for last three weeks.
7. Claimant's mental symptoms are memory problems (sometimes forgets dates), Anxiety attacks, Crying spells – yes (2-3x/week), Nervousness, decreased appetite, Sleep disturbances, fatigue, and some Suicidal thoughts.
8. Claimant takes the following prescriptions (side effects):
 - a) Omepradole – 20 mg
 - b) Synthroid – 50 mg
 - c) Methoprolol – 25 mg
 - d) Zestril – 10 mg (blood pressure)
 - e) Baby aspirin & multivitamin
9. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
10. Claimant has a 9th grade education.
11. Claimant is able to read write somewhat. Claimant can add and subtract but not multiply and divide.
12. Claimant last worked in [REDACTED] for [REDACTED]. Claimant's job duties involved racking parts to be chromed and driving a hi-lo. Claimant lifted 80 lbs., standing all day, bending and stooping. Claimant also worked for a temporary agency at [REDACTED] standing in machine shop, lifting 80-200 lbs.
13. Claimant has prior employment experience as maintenance for apartment complex – lifting appliances with dolly up to 200-300 lbs., exchanging toilet out, hi-lo driver. Claimant also worked at [REDACTED] for 12 years as hi-lo driver. His job duties included helping out on machine repairs as well as shipping and receiving.
14. Claimant testified to the following physical limitations:
 - Sitting: 20 min. Cl is in pain and has to walk around.
 - Stand: no problems, mostly walking or sitting
 - Walking – 2 blocks and then out of breath
 - Bend/stoop – not right now b/c groin hurts
 - Lift: has not even tried.
 - Grip/grasp: no
15. Claimant performs household chores such as washing dishes and cooking meals.

16. The Department found that Claimant was not disabled and denied Claimant's application on January 6, 2009.

17. Medical records examined are as follows, in part:

██████████ Medical Exam Report (Exhibit 2, pp.1-2)

HISTORY OF IMPAIRMENTS: Bipolar disorder, hypothyroidism, COPD, testodynia

PHYSICAL LIMITATIONS: Lift less than 10 lbs, stand/walk less than 2 hours in an 8 hour day, sit less than 6 hrs in 8 hour day.

“Patient has severe testodynia and recent MZ suggesting gradual return to full strength.”

“Physical limitation not expected to last over 90 days.”

Internist Progress Notes (Exhibit 2, pp. 5-11)

██████████ – Pt. cannot afford Dobutamine Stress test has no insurance was given script to . . . set up test once he has the Money.

██████████ – Chief Complaint: wake up at night with chest pain

██████████ Psychiatrist IME (Exhibit 1, pp. 3-5)

COMPLAINTS: Mood swings with highs and lows for the last six years. He has manic episodes lasting for two days and depressive episodes lasting for a few weeks. When depressed, he's isolated and withdrawn and cries frequently. He feels tired and exhausted and doesn't feel like doing anything. He doesn't socialize much with people. He gets irritable and frustrated easily. He's not sleeping well.

TREATMENT: He was admitted to a psychiatric hospital four times in the past. He said he was treated by a psychiatrist for four years at the Hegira Clinic in Westland.

DIAGNOSES: Bipolar disorder, alcohol dependence, GAF: 50

PROGNOSIS: Guarded

██████████ Hospital Admission Exhibit 1, pp. 11-19)

Patient presents with chest pain & weakness following doing cement work and swinging a sledgehammer

PAST MEDICAL HISTORY: coronary artery disease, previous myocardial infarction, and previous PCI with stent placement

IMPRESSIONS: Atypical chest pain likely, musculoskeletal in origin with history of coronary artery disease with myocardial infarction

██████ NM Myocardio SPECT (Exhibit 1, p 20)

1. Fixed perfusion defect involving the inferior aspect of the left ventricle.
2. There are no reversible perfusion defects.

██████ Echocardiogram

1. Normal left ventricular wall motion with ejection fraction greater than 55 to 60%
2. No evidence of pericardial effusion

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 as in a chrome shop in June of 2008. 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).

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 present case, the claimant has not presented the required competent, material, and substantial evidence which would support a finding that the claimant has an impairment or combination of impairments which would significantly limit the physical ability to do basic work

activities. 20 CFR 416.920(c). The Claimant has produced evidence of a 2008 Hospital Admission showing chest pain and weakness. However, the Myocardio SPECT test and the Echocardiogram performed at that time were essentially normal. In addition, the ER Physician's impression was atypical chest pain, likely musculoskeletal in origin. Claimant does show a history of coronary artery disease with myocardial infarction, but there is no indication of an ongoing cardio treatment. Claimant complained of nightly chest pain at the hearing and on [REDACTED] to his internist. Claimant was recommended to have a stress test; however, Claimant could not afford the test. The [REDACTED] Internist Medical Examination Report indicates that Claimant's cardiovascular examination is normal. Furthermore, Claimant is currently under physical restrictions from his doctor based on his tesodynia. Yet the internist indicates that the limitation is not expected to last more than 90 days.

Although the claimant has complained of medical problems, the clinical documentation submitted by the claimant is not sufficient to establish a finding that the claimant is disabled. There is no objective medical evidence to substantiate the claimant's claim that the impairment(s) are severe enough to reach the criteria and definition of disabled. The claimant does not have physical proof of a medical disability for the purposes of the Medical Assistance disability (MA-P) program.

However, the medical evidence has established that Claimant has 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, therefore, 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 Disorders* and 4.02 and 4.04 *Cardiovascular Impairments* 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 physical impairments do not meet the intent or severity of the listings.

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.

It cannot be assumed that a failure to meet or equal one of the medical listings for mental impairments equates with the capacity to do at least unskilled work. The basic mental demands of competitive, remunerative, unskilled work include the abilities (on a sustained basis) to understand, carry out, and remember simple instructions; make judgments that are commensurate with the functions of unskilled work; respond appropriately to supervision, coworkers and work situations; and deal with changes in a routine work setting. POMS DI25020.010.

In determining an individual's Mental Residual Functional Capacity, the trier of fact must also look at what mental capacity is required for the different skill levels of work as follows:

1. Unskilled work needs little or no judgment to do simple duties;
2. Semiskilled work may involve detailed, but not more complex, duties and may require alertness and close attention.
3. Skilled work requires use of judgment or dealing with people, facts, figures or ideas at a high level of complexity.

20 CFR 416.968.

Claimant's prior work experience includes working at a plating company racking parts, driving a hi-lo, working in shipping receiving and a machine shop. All of these jobs were unskilled. In addition, Claimant performed maintenance for an apartment complex which involved projects that would have been considered semiskilled. The Psychiatrist IME, however, assigned Claimant a GAF of 50 meaning "serious symptoms or any serious impairment in social, occupational, or school functioning (e.g. no friends, unable to keep a job)." The IME further found that Claimant's prognosis was guarded.

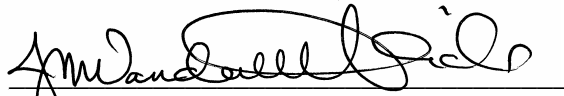
Claimant is currently unable to work, at least temporarily, due to his testicular pain and swelling. Once that clears, however, Claimant will still be left with a serious mental impairment. This Administrative Law Judge based on Claimant's testimony, his history of mental impairments and the [REDACTED] IME, finds that claimant's mental impairments render claimant unable to do even sedentary work. Claimant is disabled from his previous employment and also from any other employment. Claimant, therefore, is disabled for the purposes of the programs. 20 CFR 404, Subpart P, Appendix 2, Rule 201.00(h).

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 October 20, 2008, including retroactive benefits through July, 2008.

Therefore the department is ordered to initiate a review of the application of October 20, 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 September 2, 2010.



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

Date Signed: 09/29/09

Date Mailed: 09/30/09

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

cc:

