

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2010 40184, 2010 41098
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: August 4, 2010
Wayne County DHS (19)

ADMINISTRATIVE LAW JUDGE: Jeanne VanderHeide

HEARING DECISION

This matter was conducted by telephone hearing on August 4, 2010 from Inkster, Michigan pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department on May 12, 2010. At the hearing, the Claimant was present via telephone and testified. Claimant was represented by [REDACTED]. [REDACTED], 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 upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Claimant applied for MA as of June 26, 2009. Retroactive benefits were requested through March, 2009.
2. Claimant is 5'11" tall and weighs 132 pounds.
3. Claimant is right handed.
4. Claimant is 39 years of age.

5. Claimant's impairments have been medically diagnosed as chronic pancreatitis, epigastric abdominal pain, anxiety, personality disorder, asthma and a deformed hand from old break.
6. Claimant's physical symptoms are numbness and swelling in feet (due to previous black mold), stabbing pain in pancreas (5 times this year the pain was so severe that he was admitted to hospital), back pain (sharp, 9/10, sometimes wears slipper b/c can't tie his shoes), difficulty using right hand due to past bone fracture, vomiting, chills, and goose bumps.
7. Claimant's mental symptoms are anxiety, difficulty socializing, poor memory, poor concentration, panic attacks (blacked out and fell – Claimant does not remember the last time this happened), anxiety attacks (every day he gets so scared that he can't talk to anyone and won't go out even to take the garbage out), crying spells (every other day), weight loss (20 lbs in 4 months), sleep disturbances (toss and turn, varies 5-8 hours) and hallucinations (sees ghosts and hears voices, thinks he could be clairvoyant or have premonitions – 3x/week).
8. Claimant takes the following prescriptions:
 - a) Antivan – anxiety medication, Claimant takes all the time
 - b) Reglin
 - c) Claimant cannot afford to fill most prescribed medications but sometimes gets Vicodin from friends
9. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
10. Claimant has an 11th grade education. Claimant testified that he went to an alternative high school because he was slow.
11. Claimant is able to read/write/perform basic math skills. Claimant cannot remember a lot of things and his handwriting is shaky. Claimant says he stinks at math, but admits that he can add and subtract.
12. Claimant last worked as a canvasser for a window company for 8 years. The job duties involved walking, standing and lifting up to 100 lbs. Claimant testified that he was not able to walk or sell anymore and so left the job.
13. Claimant has prior employment experience as a machine operator (no lifting, sitting, limited bending/stooping).

14. Claimant testified that his roommate, who is retired, does all the household chores.
15. Claimant testified that he went to Rehab for alcohol addiction and his last relapse was about two weeks ago, just before he was admitted to the hospital for a pancreatic attack.
16. The Department found that Claimant was not disabled and denied Claimant's application on February 9, 2010.
17. The Department received Claimant's request for a hearing on May 12, 2010.
18. Medical records examined are as follows, in part:

5/24/09 Internal Medicine Medical Exam Report (Exhibit 1, p. 20, 21)

HX: chronic pancreatitis, alcoholism, personality disorder

DX: chronic & acute pancreatitis, delirium tremens

EXAM: tachycardia, epigastric & periumbilical pain, muscle wasting, weakness, paranoid ideation

CLINICAL IMPRESSIONS: Deteriorating

PHYSICAL LIMITATIONS: No lifting, walking less than 2 hours in an 8 hour work day, no grasping, reaching, pushing/pulling, fine manipulating or using foot controls. Physical limitations are supported by poor cognitive skills and neuromuscular coordination.

MENTAL LIMITATIONS: Comprehension, sustained concentration, reading/writing and social interaction.

4/13/09 IME (Exhibit 1, p. 9)

HX: Pt is a heavy drinker for more than 20 years. He used to consume "everything" and in the past he has had the DT's, the shakes and blackouts. He has received rehabilitation treatment for about three months in prison not long ago. Currently attending AA meetings 2-3x/week. He has had recurrent episodes of acute pancreatitis for about four years. He has had 13 episodes of acute pancreatitis.

COMPLAINTS: pain in low back, bilateral knee pain, difficulty breathing with exertion, panic attacks currently under control.

EXAM: Deformity on right hand from previous fx, mild weakness on the right hand at 4th and 5th fingers.

DX: Chronic alcoholism, chronic pancreatic, chronic anxiety

3/26/10 Internal Medicine IME (Exhibit 2)

HX: chronic alcoholism for 20 years. He used to drink a pint of vodka and six beers a day for almost 20 years. Admitted to rehab 2 years ago and not drinking since. He has residual pancreatitis that flares up frequently requiring hospitalizations which includes pain, nausea, vomiting, inability to eat and necessitates IV fluids. Back pain with difficulty bending and numbness in both feet. Malunion of bone from previous hand fracture. Bilateral knee pain with difficulty climbing stairs and kneeling down.

COMPLAINTS: fatigue, back pain, anxiety, panic attacks, right hand pain, bilateral knee pain and difficulty bending. Upset stomach, episodes of nausea and vomiting and abdominal pain due to chronic pancreatic.

NEUROLOGICAL EXAM: Large knuckles consistent with arthritis. Back exam shows decreased range of motion and positive paravertebral muscles spasms. He is able to walk on heels and toes with difficulty related to dizziness.

LIMITATIONS: CI is able to sit, stand, bend, stoop, carry, push and pull.

LUMBAR SPINE: flexion limited to 65°, extension 20°, right and left lateral flexion 20°.

3/26/10 Psychological IME (Exhibit 3)

HX: Anxiety

TX: The CI is not involved in any type of mental health counseling. He is currently prescribed Antivan, Vicodin and Reglin.

DX: Generalized anxiety disorder, GAF 50

PROGNOSIS: Guarded

MEDICAL SOURCE STATEMENT: Based on today's exam, it is felt that the claimant's ability to understand, retain and follow simple instructions and perform basic routine and tangible tasks appears to be mildly impaired. His ability to interact with co-workers, supervisors and the public seems to be moderately impaired. It is believed that the Claimant is unable to manage his benefit funds independently at this time.

2/26/10 - 3/3/10 Hospital Admission (Exhibit 4)

HX: Pt presented to hospital for abdominal pain and vomiting. The pt admits to drinking daily with substance abuse.

ASSESSMENT: Acute recurrent pancreatitis, alcohol use, tobacco use, anxiety, hx of cocaine and heroine use

3/16/09 Hospital Admission (Exhibit 1, p. 22)

HX: presents to ER with epigastric pain for last 2 days and has been gradually getting worse. He indicates that he just got out of Rehab for alcohol on 2/23/09 but indicates that he "fell off the wagon" and apparently has been drinking since Rehab approximately a 5th a day, especially he has been drinking a lot more this week-end. Not able to keep any food down.

DX: Acute pancreatitis, epigastric abdominal pain, nausea and vomiting

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 is not currently working. Therefore, the Claimant is not disqualified from receipt of disability benefits under Step

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 acute chronic pancreatitis personality disorder and anxiety which has lasted 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. 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 12.06 Anxiety Related Disorders and 12.08 Personality Disorders were reviewed. 20 CFR 404, Subpart P, Appendix 1, Rules 12.06 and 12.08. 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. Both examined listings require marked restrictions of activities of daily living, maintaining social functioning or maintaining concentration, persistence or pace or repeated episodes of decompensation of extended duration. *Id.* Claimant is only mildly to moderately limited per psychological evaluation. Therefore, 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 acute and chronic pancreatitis, anxiety and personality disorder. However, the medical records also establish chronic alcoholism. 20 CFR 416.935 requires a determination of whether drug addiction or alcoholism is a contributing factor material to the determination of disability through the factors of 20 CFR 416.935(a) through (2) (ii). The evaluation used is as follows:

- (1) Determine which physical and mental limitations would remain if Claimant stopped using drugs or alcohol.

- (2) If remaining limitations would not be disabling, drug addiction or alcoholism is a contributing factor material to a determination of disability.
- (3) If remaining limitations are disabling independent of drug addiction or alcoholism, substance abuse is not a contributing factor material to a determination of disability.

In this case, Claimant testified that his pancreatitis attacks are not related to his alcohol consumption as he experiences the attacks regardless. The undersigned does not find Claimant's testimony credible, however, as several of the hospital records admitted into evidence show that alcohol consumption directly preceded the acute attack. Claimant admitted to drinking before his most recent hospital admission in July of 2010. The hospital records for the 2/26/10 – 3/3/10 hospital admission indicate that the Claimant was drinking daily prior to admission. A 3/16/09 hospital admission followed Claimant "falling off the wagon" and a heavy bout of drinking prior to admission. Accordingly, the Administrative Law Judge finds that alcohol addiction and consumption are a contributing factor relative to a finding a disability with regards to the pancreatitis. The pancreatitis, therefore, will not be considered in this analysis. Claimant's remaining impairments stem from his personality disorder and anxiety disorder.

Claimant's prior employment includes working as a canvasser at a window company (unskilled, heavy exertional level) and as a machine operator which was primarily a sitting job with no lifting required (unskilled, sedentary exertional level). Claimant's internist found Claimant to be limited in his ability to sit, stand, bend, stoop, carry, push and pull. However, these physical restrictions are based on Claimant's pancreatitis which is not under consideration. The internist also found that Claimant had limitations in comprehension, sustained concentration, reading/writing and social interaction. A more recent Psychological IME found that "the Claimant's ability to understand, retain and follow simple instructions and perform basic routine and tangible tasks appears to be mildly impaired . . . [the] ability to interact with co-workers, supervisors and the public seems to be moderately impaired."

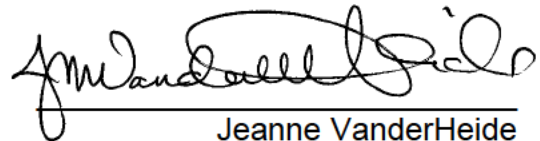
Based on the testimony and evidence in the record, The Administrative Law Judge finds that Claimant retains the ability to perform simple, unskilled, sedentary work. The administrative law judge finds that Claimant is, therefore, capable of performing his past work. As Claimant's impairments do not prevent him from performing past relevant work, Claimant is not considered 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.

2010 40184, 2010 41098 /JV

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 program and IT IS ORDERED that the Department's decision in this matter is affirmed.



Jeanne VanderHeide
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: 08/11/2010

Date Mailed: 08/11/2010

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/CJP

cc:

