

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: 201016953
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 15, 2010
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 Claimant's request for a hearing filed on January 11, 2010. After due notice, a telephone hearing was held on March 15, 2009. The Claimant was present and testified. [REDACTED] also testified on behalf of Claimant. Claimant was represented by [REDACTED]. Renee Jones, ES 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 7/29/09. Claimant requested retroactive benefits from April, 2009.
2. Claimant is 5'6" tall and weighs 130 pounds.
3. Claimant is right handed.
4. Claimant is 41 years of age.
5. Claimant's impairments have been medically diagnosed as hypertension, epilepsy, gastroesophageal reflux, bacterial meningitis, major depressive disorder recurrent with psychotic features, and chronic panic disorder.

6. Claimant's physical symptoms are difficulty walking due to shortness of breath, low back pain (sharp, 8/10), radiation to feet, difficulty standing up straight, numbness in pinky finger in right hand, fast heart rate, headaches, petit mal seizures (4x/week, black outs), grand mal seizures (last one was a couple weeks ago, 1-2x/month), equilibrium off, chills, sensitivity to light, nausea, (usually 1-2x/month) light headed when stands up and sees flashes in front of eyes.
7. When Claimant has seizures he experiences sweating, eyes roll into the back of his head, he grits his teeth and stares off into the distance (3-4x/week).
8. Claimant's mental symptoms are memory problems, difficulty with concentration, anxiety attacks (fast breathing and has to physically slow himself down, once per week), crying spells (every night), confusion (needs list when going to store), fear of dying from seizures, nervousness about when seizures will come, poor appetite, sleep disturbances (2 hours at a time for 4-5 hours total), suicidal thoughts, difficulty dealing with the public, easily angered, guilt feelings, paranoia and low self esteem.
9. Claimant takes the following prescription medications:
 - a. Tegnetol – seizures (makes gums swell)
 - b. Phenobarbital (seizures)
 - c. Hydrocholono (high blood pressure)
 - d. Prolesec (stomach, causes him to vomit)
 - e. Motrin 800 mg – 2x/day
 - f. Tylenol #3 -2x/day
 - g. Vasotec (cholesterol)
10. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
11. Claimant has an 11th grade education. Claimant also received his GED.
12. Claimant is able to read, write and perform basic math but has difficulty with high numbers. Claimant is able to make change depending on the day.
13. Claimant has no real work history. Claimant performed landscaping in 1995 for three summers (on his feet, lifting up to 10 lbs, bending and stooping).
14. Claimant has prior employment experience working at a fast food restaurant as a closer. Claimant was required to lift up to 25 lbs. and stand. Claimant testified that he had a seizure on the job and was fired 18 years ago.

15. Claimant testified to the following physical limitations:
 - a. Sitting: none
 - b. Standing: none
 - c. Walking: $\frac{1}{2}$ block before he has to sit
 - d. Bend/stoop: Difficult due to back
 - e. Lifting: Tries not to lift
 - f. Grip/grasp: Difficult with right hand due to numbness
16. Claimant performs household chores such as taking out the trash (tries not to lift), sweeping, clearing the table, dishes, and grocery shopping (depending on how he feels that day). Claimant does not do any driving.
17. Claimant uses a cane for his unsteady equilibrium on occasion.
18. The Department found that Claimant was not disabled and denied Claimant's application on October 8, 2009.
19. Medical records reviewed were as follows, in part:

[REDACTED] Neurological IME (Exhibit 3)

COMPLAINTS: Seizures since 1996 both grand mal and petite mal. His last seizure was two weeks ago.

CONCLUSION: The patient has been suffering from seizures. The seizures are not well controlled. He has both grand mal seizures and petite mal seizures.

CLINICAL IMPRESSIONS: Deteriorating

PHYSICAL LIMITATIONS: Stand/walk less than 2 hours in 8 hour work day

[REDACTED] Psychological IME (Exhibit 4)

HX: Seizures are very bad despite medication. He has been feeling depressed for the last 10 years or more which has been getting progressively worse for the last 2-3 years. He has decreased pleasure in activity. The pt feels very tired and fatigued. The pt cries for no reason. The pt is isolative and aloof. He has no socialization. The pt has disturbed memory and disturbed sleep. The pt has cut himself four times in both wrists but he was never hospitalized. He has vague suicidal thoughts off and on. He becomes anxious and nervous. He starts sweating with headaches and dizziness.

GENERAL OBSERVATION: Decreased eye contact

MENTAL TREND/THOUGHT: The patient denied any hallucinations but he talks to his deceased brother. The patient feels people are watching

him, are against him, and may hurt him for a long time. The patient has cut himself four times in the past but denied any current plans or attempts.

EMOTIONAL RX: Affect was blunted.

ADD'L INFO: Pt has had a head injury due to an assault and he has seizures.

DX: Major depressive disorder, recurrent with psychotic features, untreated; Panic disorder, chronic, untreated.

GAF: 60

PROGNOSIS: Fair. Claimant cannot manage his own benefit funds.

[REDACTED] MENTAL RESIDUAL FUNCTION CAPACITY ASSESSMENT:

Markedly limited as follows:

1. The ability to understand and remember one or two step instructions.
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 work in coordination with or proximity to others without being distracted by them.
7. The ability to accept instructions and respond appropriately to criticism from supervision
8. The ability to get along with coworkers or peers without distracting them or exhibiting behavior extremes.
9. The ability to be aware of normal hazards and take appropriate precautions.
10. The ability to travel in unfamiliar places or use public transportation.
11. The ability to set realistic goals or make plans independently of others.

Primary Care Physician Reports (Exhibit 5)

[REDACTED]: Pt has not had any seizure in the last few months. Pt. advised not to drive or operate any heavy machinery.

[REDACTED]: Level was checked in January which was within the normal range and he has not had a seizure for the last 3 months.

[REDACTED]: Petit mal seizure about 2 weeks ago.

- [REDACTED]: Had seizure last 2 days. Says he's compliant with medications.
- [REDACTED]: Last seizure was 2 months ago.
- [REDACTED]: CI states he has had "petit-mal" seizures while asleep according to girlfriend
- [REDACTED]: Pt complains of multiple seizures 7 a.m. – 9 p.m. after he took some sleeping pills Friday night with tongue bite and urinary incontinence. Complaint with meds.
- [REDACTED]: Pt reports a petit-mal seizure 2-3 weeks ago due to stress

[REDACTED] SSA Physical RFC Assessment (Exhibit 2)

Exertional Limitations: None established

Postural Limitations: None established

Manipulative Limitations: None established

Visual Limitations: None established

Case Analysis: Some problems with personal care. Seizures with infrequent episodes, treatment with medications, no neurological deficit on examination. The impairment is severe but does not meet or equal listing level

[REDACTED] Hospital admission (Exhibit 1 pp. 9-24)

Admitted for seizures and bacterial meningitis. Multiple ER visit for seizure due to noncompliance Pt had seizures for the last 11 years. Last seizure activity 7 months ago. CT of head one and showed no acute intracranial abnormality.

DX: 1. Bacterial meningitis; 2. Chronic sinusitis; 3. Epilepsy with exacerbation secondary to meningitis and change in Tegretol dose.

[REDACTED] EEG Report (Exhibit 7)

This is a mildly abnormal EEG. A mild amount of diffuse slowing into the theta range was present, more prominent over the right temporal area. These waveforms are not considered epileptiform in nature. This constellation of findings is consistent with a mild degree of cerebral dysfunction.

[REDACTED] Neurologist Report (Exhibit 6)

Last grand mal seizure was on [REDACTED]. The last time in 2007 averaging 15 episodes, in 2008 was 10 episodes for the whole year. Each time he

has a seizure he has postictal and also some headache. Besides that he also has daily daytime staring, the average is once a week.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables (RFT).

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 is not currently working. 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 showing diagnoses of epilepsy, gastroesophageal reflux, bacterial meningitis, major depressive disorder with psychotic features and chronic panic disorder. In addition, the independent psychologist found Claimant to be markedly limited in many categories of residual functioning. 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 11.02 and 11.03 *Epilepsy* were reviewed. 20 CFR 404, Subpart P, Appendix 1, Rules 11.02 and 11.03. Claimant testified that he experiences grand mal seizures 1-2x per month and petit mal seizures up to four times per week. Interestingly, Claimant's primary care physician who regulates Claimant's seizure medication reports significantly less seizures than Claimant. Other than petit mal seizures which Claimant reported experiencing in his sleep, Claimant's medical records reveal 15 seizures in 2007, 10 seizures in 2008, 5 seizures in 2009 and 1-2 seizures in the first five months of 2010. Relying on the medical records, Claimant's seizures do not meet the listing requirements of more than once a month, despite treatment, for grand mal seizures, or more than once weekly, despite treatment for petit mal seizures.

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 do not 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 one 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 has presented medical evidence supporting major depressive disorder with psychotic features, chronic panic disorder and epileptic seizures. Claimant's prior employment included working at a fast food restaurant and performing landscaping. Given the exertional requirements of standing, the jobs would all be considered to be at the light exertional level. Claimant has been placed on physical limitations by an independent neurologist of standing less than 2 hours in an 8 hour day. Therefore, based on the medical conditions alone, the undersigned finds the Claimant currently limited to sedentary work. Claimant is unable to return to past relevant work in any of the above listing 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 below the level of sedentary work. Claimant's treating physician recommended physical limitations of standing less than 2 hours in an 8 hour day. In addition, Claimant cannot drive or work on heights due to the threat of seizures. In addition, Claimant was found to be markedly mentally limited in his ability to work with anything requiring more than very simple instructions. Even in the area of simple instructions, Claimant was found to be moderately limited. Claimant has been diagnosed with Major depressive disorder with suicidal ideations along with chronic panic disorder. Both are untreated.

Claimant at forty-one (41) is considered a *younger individual*; a category of individuals in age group 18-44 when age is a more advantageous factor for making adjustment to other work. "It is usually not a significant factor in limiting such individual's ability to make an adjustment to other work, including an adjustment to unskilled sedentary work, even when the individuals are unable to communicate in English or are illiterate in English." 20 CFR 404, Appendix 2 to Subpart P, Rule 201.20. Claimant has less than a high school education and his previous work experience is unskilled.

While Claimant's physical impairments are not sufficient to meet the listing requirements, the undersigned finds that Claimant is still suffering from seizures that would interfere with his ability to hold steady employment. In addition, Claimant has significant mental limitations as he is markedly limited in a wide variety of residual functioning. Accordingly, the Administrative Law Judge finds that the combination of Claimant's mental and physical impairments and limitations has a major effect upon claimant's ability to perform basic work activities. Claimant is unable to perform the full range of activities for even sedentary work as defined in 20 CFR 416.967(a) because of the nature of the limitations. The total impact caused by the combination of medical problems suffered by the claimant must be considered. The combination of claimant's

impairments result in a severe impairment which limits claimant's ability to work. 20 CFR 404.1529.

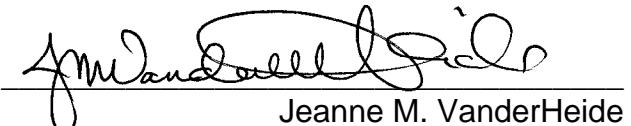
In this case, there is sufficient evidence to support a finding that the combination of Claimant's impairments is disabling him under SSI disability standards. This Administrative Law Judge finds the Claimant is "disabled" for purposes of the MA and SDA programs.

DECISION AND ORDER

The Administrative Law Judge, based on the findings of fact and conclusions of law, decides that the Claimant is "disabled" for purposes of the Medical Assistance program including any retroactive benefits applied for.

It is ORDERED; the Department's determination in this matter is REVERSED.

Accordingly, The Department is ORDERED to initiate a review of the August 29, 2009 application to determine if all other non-medical eligibility criteria are met. The Department shall inform Claimant of its determination in writing. Assuming Claimant is otherwise eligible for program benefits, the Department shall review Claimant's continued eligibility for program benefits in July, 2011.



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

Date Signed: 07/15/10

Date Mailed: 07/20/10

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.

JMV/dj

cc:

