

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.: 2010-15943
Issue No.: 2009/4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
April 7, 2010
Wayne County DHS (35)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

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 a hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan on Wednesday, April 7, 2010. The Claimant appeared and testified. [REDACTED] appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA-P") and State Disability Assistance ("SDA") benefit 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. The Claimant submitted a public assistance application seeking MA-P and SDA benefits on June 5, 2009.

2. On August 27, 2009, the Medical Review Team (“MRT”) deferred the disability determination requesting additional medical evidence.
3. On December 11, 2009, the MRT found the Claimant not disabled. (Exhibit 1, p. 1)
4. On December 16, 2009, the Department sent an Eligibility Notification to the Claimant informing him that he was found not disabled for purposes of the MA-P and SDA benefit programs. (Exhibit 1, p. 2)
5. On December 23, 2009, the Department received the Claimant’s timely written request for hearing. (Exhibit 2)
6. On February 1, 2010, the State Hearing Review Team (“SHRT”) found the Claimant not disabled. (Exhibit 3)
7. The Claimant’s alleged disabling impairments are due to shortness of breath, renal insufficiency, Hepatitis C, and HIV.
8. The Claimant’s impairment(s) have lasted, or are expected to last, continuously for a period of 12 months or longer.
9. At the time of hearing, the Claimant was 56 years old with an [REDACTED] birth date; was 5’ 9” in height; and weighed 113 pounds.
10. The Claimant has a limited education with a work history of self employment performing various general labor type positions.

CONCLUSIONS OF LAW

The Medical Assistance (“MA”) program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services (“DHS”), formerly known as the Family Independence Agency, pursuant to MCL 400.10 *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”).

Disability is defined as 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(a) The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913 An individual’s subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a) Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant’s pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant’s pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3) The applicant’s pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2)

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1) The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4) If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4) If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945 Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1) An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4) In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv)

In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a) An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a) As outlined above, the first step looks at the individual's current work activity. An individual is not

disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a)(4)(i) The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6)

In this case, the Claimant is not involved in substantial, gainful activity thus is not ineligible for disability under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b) An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c) Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b) 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.

Id. The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985) An impairment qualifies as severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985)

In the present case, the Claimant alleges disability based on shortness of breath, renal insufficiency, Hepatitis C, and HIV.

By way of background, the Claimant was diagnosed with HIV on [REDACTED]. In support of his claim some older records were submitted from [REDACTED] which documented the Claimant's diagnosis of HIV secondary to Hepatitis C. At that time ([REDACTED]), the Claimant was able to occasionally lift/carry 20 pounds with frequent lifting/carrying of 10 pounds; stand and/or walk about 6 hours in an 8-hour workday with sitting at about 6 hours during this same time frame; and was able to push and/or pull with his upper and lower extremities. There was no evidence of opportunistic infections or liver failure. The Claimant's weight in [REDACTED] was 105 pounds.

On [REDACTED], the Claimant attended a follow-up appointment for his HIV. The physical examination documented weight loss without explanation. The Claimant weight was 101 pounds. The Claimant's medications were changed.

On [REDACTED] [REDACTED], the Claimant attended a follow-up appointment for his HIV. The CD4 count from [REDACTED] was 341 at 31% and his last viral load from [REDACTED] was 211. The

diagnosis was HIV with renal failure, obstructive chronic bronchitis with acute exacerbation, and Hepatitis C. The Claimant's CD4 and viral load was 533 and 211 respectively.

On [REDACTED], the Claimant attended an appointment at the Department of Internal Medicine. An echocardiogram showed an ejection fraction of 65 to 70 percent. The Hepatitis B and C serologies were negative. Ultimately, the Claimant presented with Stage IV chronic kidney disease secondary to HIV, bone pain, and anemia. The Claimant was referred for education regarding dialysis and renal transplant.

On [REDACTED], the Claimant attended a follow-up appointment regarding his HIV. The Claimant was found to have numerous medical problems which were currently stable. The Claimant was found to be still abusing heroin.

On [REDACTED], a Medical Needs form was completed on behalf of the Claimant. The diagnosis was HIV and end-stage renal disease. The Claimant was found unable to work any job.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were HIV positive and renal insufficiency. The Claimant's weight was 109 pounds (based on a [REDACTED] examination) but he was found with no physical and/or mental limitations.

On [REDACTED], the Claimant's Viral Load was 211.

On [REDACTED], a Medical Examination Report was completed by the physician who "only treats his HIV" on behalf of the Claimant. The current diagnoses were HIV and renal insufficiency. Blood work revealed the found the Claimant at Stage IV liver functioning. The Claimant was found to have no physical and/or mental limitations.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented some medical evidence establishing that he does have some physical limitations on his ability to perform basic work activities such as carrying, lifting, and squatting. The medical evidence has established that the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Claimant has alleged disabling physical impairments due to shortness of breath, renal insufficiency, Hepatitis C, and HIV. Appendix I, Listing of Impairments, discusses the analysis and criteria necessary to support a finding of a listed impairment.

Listing 5.00 defines digestive system impairments. Disorders of the digestive system include gastrointestinal hemorrhage, hepatic (liver) dysfunction, inflammatory bowel disease, short bowel syndrome, and malnutrition. 5.00A Medical documentation necessary to meet the listing must record the severity and duration of the impairment. 5.00B The severity and duration of the impairment is considered within the context of the prescribed treatment. 5.00C1 If adequate nutrition is not maintained, weight loss due to any digestive disorder despite continuing treatment is considered. *Id.* Weight loss with BMI of less than 17.5 calculated on at least two evaluations at least 60 days apart within a consecutive 6-month period satisfies Listing 5.08.

Listing 14.08 defines human immunodeficiency virus infection. To meet this listing, an individual must provide supporting documentation of the diagnosis and one of the following:

* * *

- H. HIV wasting syndrome, characterized by involuntary weight loss of 10 percent or more of baseline (computed based on pounds, kilograms, or body mass index (BMI)) or other significant involuntary weight loss as described in 14.00F5, and in the absence of a concurrent illness that could explain the findings. With either:
1. Chronic diarrhea with two or more loose stools daily lasting for 1 month or longer; or
 2. Chronic weakness and documented fever greater than 38°C (100.4°F) for the majority of 1 month or longer.

For purposes of 14.08H, an involuntary weight loss of at least 10 percent of baseline is always considered “significant.” Loss of less than 10 percent may or may not be significant, depending on the individual’s baseline weight and body habitus. For example, a 7-pound weight loss in a 100-pound woman who is 63 inches tall might be considered significant; but a 14-pound weight loss in a 200-pound woman who is the same height might not be significant. HIV infection that affects the digestive system and results in malnutrition can also be evaluated under 5.08

In this case, the Claimant’s objective medical records confirmed the Claimant has HIV, renal failure, and Hepatitis C. The Claimant’s BMI for the months of [REDACTED], [REDACTED], [REDACTED], and [REDACTED], were 15.5, 14.9, and 16.1 which were all below the 17.5 weight loss threshold set forth in 5.08 and referred to in 14.08H. In light of the foregoing, it is found that the Claimant meets, or is the equivalent thereof, a listed impairment within 5.00 and 14.00, specifically, 5.08 and 14.08. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required.

The State Disability Assistance (“SDA”) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code (“MAC R”) 400.3151 – 400.3180. Department policies are found in PAM, PEM, and PRM. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. PEM 261 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. PEM 261

In this case, the Claimant was found disabled under the SSI disability standards therefore is found that the Claimant is disabled for purposes of the SDA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above finds of facts and conclusions of law, finds the Claimant disabled for purposes of the Medical Assistance program and the State Disability Assistance program.

Accordingly, it is ORDERED:

1. The Department’s determination is REVERSED.
2. The Department shall initiate review of the June 5, 2009 application to determine if all other non-medical criteria are met and inform the Claimant of the determination.
3. The Department shall, in light of the Claimant’s history of polysubstance abuse, evaluate the need for a protective payee in accordance with department policy.
4. The Department shall supplement the Claimant/Payee any lost benefits he was entitled to receive if otherwise eligible and qualified in accordance with department policy.

5. The Department shall review the Claimant's continued eligibility in accordance with department policy in May 2011.

Colleen M. Mamelka

Colleen M. Mamelka
Administrative Law Judge
For Ishmael Ahmed, Director
Department of Human Services

Date Signed: 4/27/2010

Date Mailed: 4/27/2010

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 the Circuit within 30 days of the receipt 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.

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