

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: 201016951

Issue No: 2009, 4031

Case No:

Load No:

Hearing Date:

March 15, 2010

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

**HEARING DECISION**

This matter was conducted by in person hearing on March 15, 2010 pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department on January 11, 2010. At the hearing, the Claimant was present and testified along with his father, [REDACTED]. Also present on behalf of Claimant was [REDACTED] of [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") and State Disability Assistance ("SDA") 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. Claimant filed for SDA and MA on August 4, 2009. Claimant requested SDA & MA and retroactive to April, 2009.
2. Claimant is 5'11" tall and weighs 210 pounds.

3. Claimant is right handed.
4. Claimant is 28 years of age.
5. Claimant's impairments have been medically diagnosed as epilepsy, mastoiditis, restless leg syndrome, sleep apnea, impaired shoulders, and depression.
6. Claimant's physical symptoms are loss of strength due to epilepsy, drowsiness, non epileptic seizures (needs place to sit or uncomfortable, body is totally weak and needs someone to take care of him at that time), epileptic seizures (petite mal – 1x/month wets self in bed or falls out of bed) (grand mal – 1-2x/6 months, brings abnormal strength to body, puts others in danger, massive jerking, hurts self – takes more time to recover, 1 – 1½ days to recover), constant discomfort from legs, night time waking, pain in shoulders with lifting (sharp with contact, dull constantly), and inability to lift arms straight up.
7. Claimant's mental symptoms are memory problems, stare outs (throughout week will forget what he's doing (ex: one minute was in prayer line and then next he knew was awake in bed playing solitaire), poor concentration due to stare outs, confusion, nervousness due to expectations for what people think you can do, decreased appetite, 20 lbs. loss (12 lbs in a month), sleep disturbances (sleeps 6-8 hrs, waking 2-3 times per night), fatigue, and needs people with him if goes into area with lots of stimulus.
8. Claimant takes the following prescriptions (side effects):
  - a) Dilantin
  - b) Keppre
  - c) Folic Acid
9. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
10. Claimant has a H.S. education plus two years of college.
11. Claimant is able to read and write but has difficulty concentrating which affects math abilities. Claimant testified that he lost jobs and has difficulty making change.
12. Claimant last worked at [REDACTED] January of 2008. Claimant was employed for 6-8 months. He was fired b/c his supervisor said that he was recommending changes in drinks, but his coworkers said it was due to his medical illness. Claimant would leave change on the counter and punched in like it was the first time, when actually it was after lunch. Claimant also testified that he had a stare out at the drive in, and would mess up stock., etc. This job required standing and lifting milk jugs.

13. Claimant has prior employment experience working at [REDACTED] (12/07) – fired there as well (could not keep up with washing dishes, had to step outside and get air); Advantage cash advance (2 months) – fired b/c confused when working on machine, and \$ coming up short in drawer.
14. Claimant testified to the following physical limitations:
  - Sit: makes him tired, contributes to stare outs.
  - Stand: same
  - Walk: maybe a mile
  - bend/stoop:
  - lift: diff due to shoulders
  - grip/grasp: pain to shoulders
15. Claimant currently lives with his brother.
16. Claimant performs household chores such as running the vacuum and putting dishes in the dishwasher. Claimant can make grits and boil noodles. However, Claimant has also left stoves and ovens on and walked away. Claimant and his brother share in taking out the trash. Claimant does his own laundry and grocery shops with his father or brother
17. Claimant’s father testified that when Claimant has a grand mal seizure he will foam at the mouth, urinate, throw up and is very weak during recovery. Claimant has 4-5 stare outs in an 8 hour period. During such an episode, Claimant will forget what he is doing. For example, he might misplace his wallet because he set it down in the bus. Claimant’s father testified that between family members, Claimant is never left alone, especially at night due to seizures.
18. The Department found that Claimant was not disabled and denied Claimant’s application on October 9, 2009.
19. Medical records examined are as follows, in part:

1/19/10 Neurologist Medical Exam Report (Exhibit A)

HX: Seizure nonepileptic & epileptic seizures episodes occurring frequently

PHYSICAL LIMITATIONS: Lifting less than 10 lbs occasionally. Sitting about 6 hours in 8 hour day. No mental limitations.

12/7/09 Neurologist Report (Exhibit A13)

IMPRESSION: Hx of epileptic as well as non-epileptic spells. It is very difficult to differentiate which one that he is reporting.

RECOMMENDATION: Dilantin increased.

10/7/09 Neurologist Report (Exhibit A12)

IMPRESSION: Hx of epileptic as well as nonepileptic spells. We are not able to document the nonepileptic spells because his insurance does not allow us to have a continuous long term EEG monitoring. He went to the monitoring, but they did only 24 hours. During that time, they did capture the nonepileptic spells. Again, we had the discussion that nonepileptic spells we cannot do anything. He is worried about night episodes. He does have small rug burns on his face.

7/27/09 Neurologist Report (Exhibit A10)

Hx of nonepileptic spells and also previous history of seizures. He was admitted at the hospital for a video monitoring for 24 hours, which showed nonepileptic spells. The patient also has a history of obstructive sleep apnea. He is not using the CPAP and is not giving a correct answer for why he is not using it. The pt is having restless leg syndrome so significant that he is having trouble falling asleep and fidgety. During when I asked him about his medication, suddenly he did state that he did not know the medication. He turned around and looking little odd, staring into space for may be not even 10 seconds then he came back to normal and he started telling me about his mediation, the doses. I am not sure what those episode was, whether it was a nonepileptic spell or not.

RECOMMENDATION: Advised him strongly that he has to use the CPAP machine for his obstructive sleep apnea. Given Rx for restless leg syndrome.

4/20/09-4/22/09 Hospital Admission (Exhibit 1, 49)

Admitted to epilepsy monitoring unit for diagnostic evaluation of his episodes with 24 hour video EEG monitoring.

- 1) Spells of shaking, drooling from the mouth, eyes rolling up associated with urinary incontinence and tongue biting, mostly nocturnal.
- 2) Staring spells, when he talks to someone, he would suddenly stop and be unresponsive for a few seconds. Also told that his face appears to be twists. Afterwards he reports not feeling right.
- 3) Psuedoseizures – overwhelmed by emotions and generalized weakness lasting about 10 minutes.

EMU SUMMARY: Rare left temporal sharp wave discharges were present. One non epileptic seizure.

IMPRESSION: The recorded interictal abnormalities indicates localization related epilepsy and the patient is at risk for complex partial seizures and tonic clonic seizures. Discharged home on increased dosage of Keppra and Dilantin.

2/12/09 Dr Note (Exhibit 1, p. 23)

Complaint: Memory Loss, confused and forgetful. Out of Ambien

IMPRESSION: Seizures, sleep apnea, B12 deficiency,

2/12/09 Neurologist Report (Exhibit A7)

Pt recently admitted to hospital for a seizure. During an EEG, he had episode of spell, thought to be nonepileptic seizures. The patient had several of them while he was in the hospital. The pt was placed on Trileptal to help him have a deprive from depression; however, he started complaining of dizziness, nausea, vomiting and rash so it was

discontinued. The pt is reporting very rundown, not able to take care of himself. He has fallen several times.

PHYSICAL EXAM: Pt appeared sleeping, Pt was wobbling while walking. Not able to take care of himself.

IMPRESSION: Epilepsy with nonepileptic spells. I am not sure whether he has any epileptic spells or not. His EEGs that he had were normal.

1/26/09 Neurologist Report (Exhibit A5-6)

HX: Pt has a history of seizures from age 10. Describes what appears to be grand mal seizure. He reports all his seizures occur in sleep, either when he goes to bed or merely in the morning. Wakes up with wetting the bed or throwing up or shaking all over. There were episodes of staring into space, but they are very rare. He reports at least one seizure a month.

IMPRESSION: Epilepsy, most likely complex partial seizures with secondary generalization.

RECOMMENDATION: Advised to not drive for six months of seizure free.

1/30/09 EEG (Exhibit 1, p. 14)

HX: The pt came for an MRI, had a seizure. The pt is not responding that well.

IMPRESSION: This is essentially a normal wake EEG

1/29/09 EEG (Exhibit 1, p. 16)

IMPRESSION: This is essentially a normal wake EEG, mild drowsy EEG

7/29/08 Dr. Note (Exhibit 1, p. 26)

HX: Possible seizure 2 days ago when went to sleep had incontinence followed by disequilibrium

IMPRESSION: Seizure disorder, bilateral shoulder syndrome

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). Residual Functional Capacity is what an individual can still do despite his or her limitations. It is essentially an assessment of an individual’s ability to do sustained work-related physical and mental activities in a work setting on a regular and continuing basis. A “regular and continuing” basis means 8 hours a day, for 5 days a week, or an equivalent work schedule. SSR 96-8P. Only medical determinable impairments must be considered in assessing an individual’s limitations and restrictions. Id. In this case, under the first step, the Claimant last worked in January, 2008. Nor would Claimant’s previous attempts at employment be considered regular or continuing. 20 CFR

416.974b. 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 of epileptic and nonepileptic seizure disorder, obstructive sleep apnea and restless leg syndrome that affects him physically and mentally. The medical evidence has established that Claimant has a medical impairment that has more than a minimal effect on basic work activities; and Claimant's impairments have lasted continuously for more than twelve months. The case will be evaluated at step 3.

### **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 supports a finding that the Claimant's physical impairments are "listed impairment(s)" or equal to a listed impairment. 20 CFR 416.920(a) (4) (iii). In this matter, the medical records establish a diagnosis of epileptic and nonepileptic seizures.

After reviewing the criteria of listing 11.02 and 11.03 *Epilepsy*, the undersigned finds the Claimant's medical records substantiate that the Claimant's mental impairments meets or is medically equivalent to the listing requirements. 20 CFR 404, Subpart P, Appendix 1, rule 11.03 describes the listings as follows:

*11.02 Epilepsy – convulsive epilepsy (grand mal or psychomotor) documented by detailed description of a typical seizure pattern, including all associated phenomena; occurring more frequently than once a month in spite of at least 3 months prescribed treatment. With*

- A. Daytime episodes (loss of consciousness and convulsive seizures) or
- B. Nocturnal episodes manifesting residuals which interfere significantly with activity during the day.

*11.03 Epilepsy – nonconvulsive epilepsy (petit mal, psychomotor, or focal) documented by detailed description of a typical seizure pattern, including all associated phenomena; occurring more frequently than once weekly in spite of at least 3 months of prescribed treatment. With alteration of awareness or loss of*

consciousness and transient postictal manifestations of unconventional behavior or significant interference with activity during the day.

In the present case, Claimant reports petite mal epileptic seizures occurring once a month, mostly nocturnal where he will fall out of bed, urinate on himself and often cause himself injury. Claimant also reports grand mal or tonic clonic seizures once or twice in a six month period. Claimant testified that the grand mal seizures involve massive jerking putting others in danger and requires a significant amount of recovery time. Claimant's testimony is supported by the medical records. Claimant was admitted to the hospital for seizure activity on 1/29/09. Three months later, the Claimant was admitted for 24 hour video EEG monitoring of seizure activity which revealed one seizure. As a result of that 24 hour period, Claimant was advised that he was at risk for complex partial and tonic clonic seizures. Claimant's neurologist indicated on 1/19/10 that Claimant still suffered from frequent epileptic and non epileptic seizures and one report from the neurologist revealed rug burns on the Claimant's face.

In addition, Claimant testified that he experiences stare outs. Claimant's father reported that these will happen numerous times during the day. Claimant's neurologist observed one such episode during a routine office visit. Claimant testified that these stare outs interfered with his ability to perform jobs and led to his dismissal from jobs.

The undersigned finds that Claimant suffers from grand mal or psychomotor seizures (some partial) more than once monthly with residuals that interfere with Claimant's ability to carry out his day. According, the Administrative Law Judge finds that the Claimant's medical records substantiate that the Claimant's mental impairments meets or are medically equivalent to the listing requirements. In this case, this Administrative Law Judge finds the Claimant is presently disabled at the third step for purposes of the Medical Assistance (MA) program. As

claimant is disabled, there is no need to evaluate Claimant with regards to the fourth or fifth steps.

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.

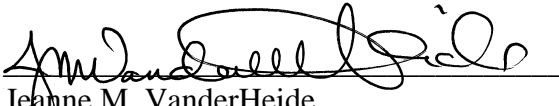
In this case, there is sufficient evidence to support a finding that Claimant's impairment has disabled him under SSI disability standards. This Administrative Law Judge finds the Claimant is "disabled" for purposes of the MA program.

#### 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 January, 2009, inclusive of any retroactive benefits applied for.

Therefore the department is ordered to initiate a review of the application of August 5, 2009, 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 in June, 2011.

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

Date Signed: June 10, 2010

Date Mailed: June 10, 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/htw

cc:

