

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.: 201020977

Issue No.: 4031, 2009

Case No.:

Load No.:

Hearing Date:

March 25, 2010

Oakland 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 February 16, 2010. After due notice, a telephone hearing was held on March 25, 2010. The Claimant was present and testified. Claimant was represented by [REDACTED] of [REDACTED]. [REDACTED], FIM and [REDACTED], 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") and State Disability Assisatance ("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 MA on July 23, 2009 and SDA on 11/11/10. Claimant requested MA and SDA retroactive through June, 2009.
2. Claimant is 6'0" tall and weighs 230 pounds.

3. Claimant is right handed.
4. Claimant is 43 years of age.
5. Claimant's impairments have been medically diagnosed as hepatic fluid and encephalopathy, degenerative disc & spurring in low back (L2-L5), neuropathy in feet, Hepatitis C, Liver Disease, arthritis, blindness in right eye, carpal tunnel syndrome, Bipolar disorder, and Personality disorder.
6. Claimant's physical symptoms are low back pain (constant 8-9/10, sometimes worse than others, but always feels it, sharp stabbing), pain in feet underneath arches and across tops of toes (8-9/10, constant, will wake him up at night), numbness down both sides of legs to feet, pain down legs, tingling in both legs and feet, sleep disturbances, pains in stomach, difficulty wearing shoes – wears sandals, and burning in buttocks.
7. Claimant's mental symptoms are depression, decreased concentration, anxiety, crying spells (2-3x/month), nervousness, poor appetite but put on a lot of weight over winter, sleep disturbances (3-4 hours is good, but still interrupted, up to 6 times per night), insomnia, fatigue, guilt feelings, hallucinations, and low self esteem.
8. Claimant takes the following prescriptions:
 1. Lasiks water pills
 2. Was taking over the counter Motrin, but tries to avoid b/c of liver disease.
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 does not have a GED and does not have any other certifications or education.
11. Claimant is able to read, write and perform basic math.
12. Claimant last worked at [REDACTED] three years ago. His general duties included shipping and receiving (on feet all day, lifting 30-40 lbs., bend/stoop). Claimant left this job because it became too hard physically.
13. Claimant has prior employment experience working in cemetery (picking up flowers and weed whacking, on feet off/on all day, very little lifting), truck driver (delivering mobile home in/out of truck, lifting 25-30 lbs), maintenance man in mobile home park (did electrical work, plumbing, lawn maintenance, general repairs, water main breaks, snowplowing with truck - on feet most of day, lifting up to 75 lbs., bend/stoop)

14. Claimant testified to the following physical limitations:
 - Sitting: already antsy b/c feet on fire – 1 hr. (no shoes, gets up to do something)
 - Stand: 1 – 1 ½ hours at grocery store with cane, sometimes will require a break.
 - Walk: Claimant needs to sit after just walking in from parking lot. Claimant gets motorized cart at grocery
 - Bend/stoop: Limited by back and feet. Can't bend toes, locked in position.
 - Lifting: can lift gallon of milk and laundry basket of clothes.
 - grip/grasp: not really, but wd have problem if repetitive b/c of carpal tunnel syndrome.
15. Claimant performs household chores such as cooking meals, going to the grocery store (sometimes family members go for him), doing dishes in spurts (can only stand 10-15 minutes), vacuums (when has to as it hurts his back - Claimant does it a couple times a month) making the bed, one basket of laundry a week. Claimant mows the grass with a power mower. Brother usually stops by and takes out trash. Claimant can take out the trash if necessary, but it is only a ½ trash can and is on wheels. Claimant will also shovel a path out to the car if he needs to.
16. Claimant was given a cane at the hospital after he was in bed for 14 days. Claimant always uses the cane now when he leaves the house. Claimant has a hard time standing in shower.
17. The Department found that Claimant was not disabled and denied Claimant's application on December 4, 2009.
18. Medical records examined are as follows, in part:

4/19/10 Internal Medicine IME (Exhibit 2)

COMPLAINTS: Blindness in right eye, herniated disc L2-L5 with chronic back pain, dizziness and balance problems, parenthesis in upper and lower extremities, depression and carpal tunnel syndrome.

HX: Muscle spasms in back. Pt uses a cane for balance and support. He more or less has a chronic limp on the left side with parenthesis of both legs. Pain is aggravated by standing, stooping, squatting, bending, walking, getting up, pushing, pulling and climbing stairs. History of chronic depression with mood swings, crying spells, sadness, suicidal thoughts and suicidal attempts. Admitted 4/11/10 for 3 day hospital stay due to depression. Seizure in 2009.

4/19/10 Medical Exam Report (Exhibit 3)

CLINICAL IMPRESSION: Deteriorating

PHYSICAL LIMITATIONS: Lifting less than 10 lbs occasionally, stand/walk at least 2 hours in an 8 hour day and sit about 6 hours in an 8 hour day.

4/20/10 Neurologist IME (Exhibit 4)

COMPLAINTS: Pain in back, hip, left leg and difficulty walking.

HX: Review of medical records from 4/12/10 ER following drinking binge – alcohol level exceeding 400.

SOCIAL HISTORY: Drinks 6-12 beers regularly

NEUROLOGICAL EXAM: Tenderness in mid spine area

4/19/10 Psychiatric IME (Exhibit 5)

ATTITUDE/BEHAVIOR: Poor self-esteem and mediocre motor activity. During interview he frequently changed his position due to his back pain and appeared he was suffering from pain and it was reflected in his facial expression. He was irritable, anxious and more so angry, autonomous, amotivational with poor insight particularly in relation to drinking alcoholic beverages despite of Cirrhosis of the liver.

MENTAL TREND/THOUGHT: He claimed he feels worthless and he is suffering from severe insomnia, frequent awakening, lack of adequate total number of sleep hours, weight gain and fluctuating appetite.

DX: Alcohol dependant, chronic, Bipolar Disorder, mixed type, Personal Disorder NOS (sharing some features of Paranoid Personality Trait, Dependent Personality Traits).

GAF 35

PROGNOSIS: Guarded. Pt cannot manage benefit funds due to poor judgment and lack of insight resort to alcohol. Pt may benefit from payee to look out for his best interest.

MENTAL RESIDUAL FUNCTION CAPACITY ASSESSMENT: Markedly limited as follows:

1. The ability to understand and remember detailed instructions.
2. The ability to carry out detailed instructions.
3. The ability to maintain attention and concentration for extended periods.
4. The ability to perform activities within a schedule, maintain regular attendance and be punctual with customary tolerances.
5. The ability to work in coordination with or proximity to others without being distracted by them.
6. The ability to accept instructions and respond appropriately to criticism from supervision
7. The ability to get along with coworkers or peers without distracting them or exhibiting behavior extremes.
8. The ability to respond appropriately to change in the work setting.
9. The ability to be aware of normal hazards and take appropriate precautions.
10. The ability to set realistic goals or make plans independently of others.

9/25/09 Emergency Room Visit (Exhibit A, p. 1)

COMPLAINTS: Epigastric pain, chest pain and ETOH intoxication, back pain and neuropathy in lower extremities.

- Admitted to medical floor and then discharged with neurontin.

7/14/09 Cardiac Consult (Exhibit A, p. 7)

Evaluation of chest discomfort

ASSESSMENT: Atypical chest discomfort, intermittent episode of leg weakness of uncertain etiology. "I do not see anything here to suggest a myocardial ischemia or cardiac etiology for his chest discomfort."

ECHOCARDIOGRAM: Echo images demonstrate normal resting left ventricular systolic function.

6/21/09 EEG (Exhibit 1, p. 18)

This EEG is indicative of the presence of a localization related epilepsy which puts the patient at increased risk for partial as well as secondary generalized tonic clonic seizures. The background slowing indicate the presence of a moderate encephalopathy. No electrographic seizures were recorded.

7/13/09 LSpine X-ray (Exhibit 1, p. 20)

Mild narrowing of the L5 disc and moderate degenerative osseous changes.

6/17/09 Abdominal sonogram (Exhibit 1, p. 21)

Hepatomegaly with diffuse increased echogenicity throughout the liver with difficulty in penetrating the liver and no obvious mass was apparent within the pancreatic head and body were visualized but the pancreas was certainly suboptimally visualized.

6/17/09 – 7/6/09 Hospital Admission (Exhibit 1, pp. 24-25)

DX: 1. Respiratory failure requiring mechanical ventilation and prolonged stay in the intensive care.

2. Delirium tremens
3. Acute alcohol withdrawal
4. Chronic alcohol abuse
5. Chronic alcoholic liver disease

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/Program Administrative Manual (BAM/PAM), the Bridges/Program Eligibility Manual (BEM/PEM) 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 last worked three years ago. 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 chronic back pain (evidenced by muscle spasms), parenthesis in upper and lower extremities, carpal tunnel syndrome, chronic depression, bipolar disorder and personality disorder. Claimant also has been placed on physical limitations by an independent medical examiner of lifting less than 10 lbs occasionally, standing/walking 2 hours per day, and sitting 6 hours per day. In addition, Claimant was determined to be markedly limited in a wide variety of mental 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.

However, the medical records also establish a long history of alcohol abuse. 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.

Claimant has a long history of alcohol abuse. Claimant has been admitted to the hospital a couple of times with acute alcohol withdrawal. However, the independent medical examiner found objective evidence of back issues (muscle spasms and parenthesis in both legs) and

determined that Claimant would have aggravation by standing, stooping, squatting, bending, walking, pushing, pulling and climbing stairs. These symptoms would not change were Claimant to quit drinking. In addition, Claimant was diagnosed by an independent psychiatrist with bipolar disorder with a GAF of only 35. This diagnosis would also remain regardless of whether Claimant was drinking. Accordingly, this Administrative Law Judge finds that the alcohol addiction is not a contributing factor material to a determination of disability. Therefore, 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 1.04 *Disorders of the spine* and 12.04 *Affective Disorders* were reviewed. 20 CFR 404, subpart P, Appendix 1, Rules, 1.04 & 12.04. 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. 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 physical impairments. Claimant is blind in the left eye, has chronic back issues and parenthesis in the lower extremities as well as carpal tunnel syndrome. In addition, Claimant has mental limitations from chronic depression, bipolar disorder and personality disorder. Claimant's prior employment included shipping & receiving, cemetery maintenance, truck driver, and maintenance worker, all of which qualify as unskilled and at least light in exertional level. Claimant has been placed on physical limitations by an independent doctor of standing/walking two hours in an eight hour day and sitting six hours in an eight hour day as well as lifting less than 10 lbs. Therefore, 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 at the level of sedentary work. Sedentary work is described as follows:

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

20 CFR 416.967(a). Claimant's most recent doctor recommended physical limitation dictates that Claimant is limited to lifting less than 10 lbs occasionally throughout the day and standing/walking two (2) hours per eight hour day. Therefore, Claimant would be limited to sedentary work. 20 CFR 416.967.

Claimant at forty-three (43) 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's education is "limited or less – at least literate and able to communicate in English" and her previous work experience is semi-skilled. Looking at Claimant's physical medical conditions alone, Claimant would not meet the requirements for disability as Claimant could likely find a sedentary unskilled job.

However, in addition to Claimant's physical limitations (which were determined to be deteriorating by the independent physician), Claimant suffers from chronic depression, bipolar disorder and personality disorder. Claimant is currently not taking any medication to control these mental diseases due to lack of insurance. The independent psychiatrist found Claimant markedly limited regarding detailed instructions, maintaining concentration, working with others or accepting instruction. Furthermore, Claimant was assigned a GAF score of 35 which translates to some impairment in reality testing or communication (e.g., speech is at times illogical, obscure, or irrelevant) OR major impairment in several areas, such as work or school, family relations, judgment, thinking, or mood (e.g., depressed man avoids friends, neglects family, and is unable to work). Claimant's mental impairments must be considered in conjunction with his physical limitations.

The Administrative Law Judge finds that the combination of Claimant's mental and physical impairments and limitations have 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.

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 Bridges/Program Administrative Manual (BAM/PAM), the Bridges/Program Eligibility

Manual (BEM/PEM) and the Reference Tables (RFT). 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 is disabling 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 on the findings of fact and conclusions of law, decides that the Claimant is "disabled" for purposes of the Medical Assistance program and the State Disability Program.

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

Accordingly, The Department is ORDERED to initiate a review of the 7/23/09 MA and 11/11/09 SDA applications 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 May, 2011.

The Medical Social Work consultant in conjunction with the Medical Review Team is to consider the appropriateness of ORDERING the Claimant into mandatory mental health treatment and substance abuse counseling.

Further, a referral is to be made to Adult Protective Services to consider benefit fund management on behalf of the Claimant; and other actions as necessary.

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

Date Signed: May 28, 2010

Date Mailed: May 28, 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 60 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court 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.

JV/htw

cc:

