

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: 20103714  
Issue No: 2009, 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
December 16, 2009  
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted by telephone hearing pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department on September 14, 2009. At the hearing, the Claimant was present and testified. Patricia Colvin, MCW appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of the 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 applied for SDA and MA as of 6/28/09.
2. Claimant is 6' tall and weighs 175 pounds.
3. Claimant is right handed.
4. Claimant is 46 years of age.

5. Claimant's impairments have been medically diagnosed as asthma, headaches, hypertension HIV (now active AIDS) and incontinence.
6. Claimant's physical symptoms are headaches (every day in temples – taking Vicodin for headaches since 10/09), diarrhea (wears depends), hot sweats at night, shortness of breath, pain in right leg, trouble keeping food down, nauseous, vomiting food (4-5x/day for last couple months), and right hand shaking.
7. Claimant's mental symptoms are memory (forgetful for example he forgets to eat when food is right there, forgets people are coming over), poor concentration (cannot read any more), panic attacks (feels like walls coming in and lights bother him), anxiety attacks, crying spells (every other day), confusion, fear of dying by himself, nervousness, poor appetite, weight loss (30 lbs in last two months), insomnia, fatigue, paranoid, low self esteem.
8. The Department testified that Claimant's right hand exhibited a slight tremor. The Department also testified that the weakness and frailty of Claimant is obvious, that he doesn't have balance even when walking with cane, and that he exhibited decreased vision.
9. Claimant takes the following prescriptions:
  - a) Kaletra - AIDS
  - b) Combivior – AIDS
  - c) Dapsone – AIDS
  - d) Creon – stomach
  - e) Sulfamethoxazole – stomach
  - f) Naprosxen – stomach
  - g) Vicodin
  - h) Albuterol inhaler
  - i) Nebulizer (3-4x/day)
10. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
11. Claimant has an 11<sup>th</sup> grade education and GED, plus a one year certificate in mental health and certification as prep chef.
12. Claimant is able to read, write, and perform basic math skills.
13. Claimant last worked at the auto show of 2008 as a prep cook. Job duties included being on his feet all day, lifting up to 20lbs, bending and stooping. Claimant left this position due to getting sick.
14. Claimant has prior employment experience as a prep cook and restaurant manager (at [REDACTED] and [REDACTED]). His job duties included payroll, scheduling, lifting up to 20 lbs., and walking on his feet in the restaurant most of day.
15. Claimant testified to the following physical limitations:

- Sitting: can sit for 10 min. at a time before he has to move.
  - Standing: Cannot stand
  - Walking: cannot walk without cane. (doesn't walk except to go to doctor or to go from bedroom to couch)
  - Bend/stoop: Difficult to get into tub – it hurts
  - Lifting: cannot hold glass of water without spilling it. Cannot lift gallon of milk. Claimant testified that his housekeeper is feeding him.
  - Grip/grasp: difficult to do either
16. Claimant testified that a housekeeper/caretaker lives in home with Claimant. The housekeeper brushes Claimant's hair and helps feed him.
17. The Department found that Claimant was not disabled and denied Claimant's application on 9/2/09.
18. Medical records examined are as follows:

ER Medicine IME (Exhibit 1, pp. 4-11)

COMPLAINT: Examinee seen for alleged disability due to asthma, HIV disease, incontinence and headaches.

HISTORY: Asthma aggravated by walking prolonged distances. Uses Albuterol inhaler and nebulizer at night. Diagnosed with HIV 3/2008, admitted to hospital for prolonged period. Episodes of nausea, vomiting and diarrheal stools 6-7x/day along with incontinence and bloody diarrhea. Chronic back pain, right leg pain and stiffness of neck. Pt states he has difficulty standing, stooping, squatting, getting up, walking, lifting, bending, pushing, pulling, reaching and climbing stairs. Chronic fatigue, night sweats, insomnia, weight loss. Episodes of dizziness and occasional chest tightness along with irregular heartbeats.

BONES AND JOINTS: He has a slight limp on the right side. He has tremors of his hands or at least upper extremities, very subtle. Able to squat to 50% of the distance and to bend 60. Straight leg raising while lying 0-50.

IMPRESSION: The examinee has a history of HIV disease, currently being followed by an infectious disease doctor. He was admitted in 2008. He continues to have chronic episodes of nausea, vomiting, and diarrheal stools with bloody diarrhea and incontinence, wearing Depends or adult diapers on 24/7 basis. The examinees states that he uses a cane for balance and support and states that he is progressively getting gastro esophageal reflux.

██████████ Infectious Disease Medical Exam (Exhibit 1, pp. 18-19)

HX: HIV, hypertension, Asthma, diarrhea, headaches, leg weakness

CLINICAL IMPRESSIONS: Deteriorating

PHYSICAL LIMITATIONS: Lifting 10 lbs occasionally, stand/walk less than 2 hours in 8 hour day, sit less than 6 hours in 8 hour day, no pushing/pulling, no foot/leg controls

MENTAL LIMITATIONS: Forgetful

██████████ ER Medicine IME (Exhibit 3, pp. 23-25)

IMPRESSION: Asthma: The examinee has a history of asthma since 2005, currently on inhalers for this problem. The examinee has been seen and treated for acute exacerbation of asthma in ██████████ at ██████████. He was also seen and treated in ██████████ at ██████████. The examinee has chronic shortness of breath and is also HIV positive. There is a record dated ██████████. He was admitted ██████████ to ██████████ with acute exacerbation of asthma, HIV disease, non compliance to medication, hypernatremia secondary to dehydration and deep vein thrombosis prophylaxis.

██████████ Internal Medicine IME (Exhibit 3, pp. 10-17)

Pt being seen for alleged disability to asthma. The patient had a pulmonary function test done in June of this year that showed evidence of low vital capacity, possibly due to restriction of lung volume and a pulmonary function test was done today that showed the same findings of low vital capacity possibly due to restriction of lung volume. There is decreased FVC and decreased FEV1

██████████ HIV Test (Exhibit 1, p. 23)

HIV present at 96 RNA Copies/ML

██████████ HIV Test (Exhibit 1, p. 21)

HIV present at 2460 RNA Copies/ML

██████████ IME (Exhibit 1, pp. 32-37)

REVIEW OF SYMPTOMS: He has lost 13 lbs in the last year. He has diarrhea 3-4 times a day and does have to wear a diaper. He complains of pain in his left leg after a fall in February.

PHYSICAL EXAM: He is a very thin male. He walks with a walker. He does appear to be in discomfort. He does appear to be anxious and he does appear to be having pain as well.

ASSESSMENT: This patient has a history of HIV and likely full blown AIDS according to records. He is currently on medications and is experiencing side effects such as frequent diarrhea and fatigue. He has a history of asthma. His asthma is poorly controlled and would recommend pulmonary function tests.

██████████ Hospital Admission (Exhibit 1, pp. 42 – 45)

HISTORY: History of asthma, HIV/AIDS with CD4 80, diagnosis in April, 2008. Pt sent from ID clinic for altered mental status. Sleeping more than normal, more forgetful and stumbling more than normal and falling also not speaking in complete sentences.

DX: Encephalitis and meningitis and HIV early onset dementia

██████████ Hospital Admission (Exhibit 1, pp. 46 – 47).

COMPLAINTS: Shortness of breath

Started on asthma treatment with p.o. steroids and bronchodilators nebulized Albuteral and Atrovent. Diagnosed with HIV/AIDS

██████████ Hospital Admission (Exhibit 1, pp. 48 – 51)

Shortness of breath

DX: Acute asthma exacerbation, acute renal failure, anemia, paranoid behavior (seen by psychiatrist who indicated patient has some paranoid personality)

#### 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**

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 the subject case, the Claimant has not worked since the beginning of 2008. Therefore, he is not disqualified at the first 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)

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 asthma, hypertension, HIV, incontinence, meningitis and DVT. Furthermore, Claimant's treating physician has placed him on physical restrictions. The medical evidence has established that Claimant has physical impairments that have more than a minimal effect on basic work activities; and Claimant's impairments have lasted continuously for more than twelve months.

### **3. Listed Impairment**

After reviewing the criteria of listings 14.08 *Human immunodeficiency virus (HIV) infection*, the undersigned finds the Claimant's medical records substantiate that the Claimant's physical impairments meets or is medically equivalent to the listing requirements. 20 CFR 404, Appendix 1 to Subpart P, § 14.08 describes HIV listing as follows:

HIV infection with documentation as described in 14.00D3 and one of the following:

- A. Bacterial infections, or
- B. Fungal infections, or
- C. Protozoan or helminthic infections, or
- D. Viral Infections, or
- E. Malignant neoplasms, or
- F. Conditions of the skin or mucous membranes with extensive fungating or ulcerating lesions not responding to treatment, or
- G. Hematologic abnormalities, or
- H. Neurological abnormalities, or
- I. HIV wasting syndrome, characterized by involuntary weight loss of 10 percent or more of baseline and, in the absence of a concurrent illness that could explain the findings, 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 Celsius for the majority of 1 month or longer
- J. Diarrhea, lasting for 1 month or longer, resistant to treatment and requiring intravenous hydration, intravenous alimentation, or tube feeding.
- K. Cardiomyopathy, or
- L. Nephropathy, or
- M. One or more of the following infections, resistant to treatment or requiring hospitalization or intravenous treatment 3 or more times in 1 year (sepsis, meningitis, pneumonia, septic arthritis, endocarditis, or sinusitis), or
- N. Repeated manifestations of HIV infection resulting in significant, documented symptoms or signs (e.g. fatigue, fever, malaise, weight loss, pain night sweats) and one of the following at the marked level:
  - a. Restrictions of activities of daily living; or
  - b. Difficulties in maintaining social functioning; or
  - c. Difficulties in completing tasks in a timely manner due to deficiencies in concentration, persistence or pace.

20 CFR 404, Appendix 1 to Subpart P, § 14.08.

Claimant testified that when he first became ill in early 2008, he went from 218 lbs down to 140 lbs. Claimant was able to gain some weight back but testified that he is not really eating and has lost 30 lbs in the last two months. Both episodes would qualify as a 10% involuntary weight loss which is considered significant. Furthermore, Claimant suffers from chronic diarrhea. The Administrative Law Judge finds that Claimant's testimony credibly and supported by medical evidence and, therefore, meets the requirements of Rule 14.08 *HIV*. 20 CFR 404, Appendix 1 to Subpart P, Rule 14.08.

Considering all of the above, the undersigned finds the Claimant's medical records substantiate that the Claimant's mental impairments meets or are medically equivalent to the listing requirements of 1.04(A). 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.

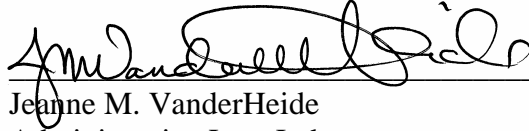
In this case, there is sufficient evidence to support a finding that Claimant's impairment has disabled him under SSI disability standards. This Administrative Law Judge finds the Claimant is "disabled" for purposes of the MA and SDA programs.

#### 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 and SDA programs as of 6/28/09 including any retro benefits applied for.

Therefore, the department is ordered to initiate a review of the application of June 28, 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 January, 2011.

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

Date Signed: 01/29/10

Date Mailed: 02/02/10

**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.

JV/dj

cc:

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