

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: 2007-19368

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

August 29, 2007

Hillsdale County DHS

ADMINISTRATIVE LAW JUDGE: Jana A. Bachman

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. After due notice, a telephone hearing was held on August 29, 2007.

ISSUE

Whether the Department of Human Services (department) properly determined that claimant has not established disability for purposes of Medical Assistance (MA) and State Disability Assistance (SDA).

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

(1) February 9, 2007, claimant applied for MA and SDA. Claimant submitted medical records for department consideration.

(2) March 14, 2007, the Medical Review Team denied claimant's application.

Department Exhibit (Department) A.

(3) March 20, 2007, the department sent claimant written notice that the application was denied. Department C.

(4) March 22, 2007, the department received claimant's timely request for hearing.

(5) July 10, 2007, the State Hearing Review Team (SHRT) denied claimant's application. Department B.

(6) August 30, 2007, the telephone hearing was held. Prior to the closing of the record, claimant requested the record be held open for additional medical evidence. Claimant waived his right to a timely hearing decision. March 17, 2008 after review of all medical evidence, the SHRT again denied claimant's application. SHRT Decision, 3/17/08.

(7) Claimant asserts disability based on impairments caused by herniated discs, asthma, diabetes, sleep apnea, bipolar disorder, depression, and anxiety.

(8) Claimant testified at hearing. Claimant is 32 years old, 5' 10" tall, and weighs 313 pounds. Claimant completed a GED and is able to read, write, and perform basic math. Claimant has completed approximately 30 college credits. Claimant's driver's license is suspended. He cares for his needs at home.

(9) Claimant's past relevant employment has been as a pizza cook, gas station clerk and manager, and doing factory labor.

(10) December 5, 2006, claimant underwent an Adult Diagnostic Assessment. A report was prepared that indicates claimant reports recent deaths of claimant's mother and a close friend and the breakup of an intimate relationship. Claimant reports abuse of marijuana and alcohol since his teen years with last use reported to be summer 2006. Claimant reports suicidal

ideation without plan or intent. Claimant was oriented X3. Calculation, abstract thinking, and intelligence are intact. Body movements appeared slow and decreased. Speech was within normal limits. Affect was anxious, hostile, depressed, and sad. Stream of thought was within normal limits. Immediate memory was intact; recent and remote memory were impaired.

Claimant A, pages 26-49. December 22, 2006, claimant underwent an independent psychiatric exam. A narrative report was prepared that states AXIS I diagnoses of anxiety and depression in relation to financial and health stressors. Claimant's exam was within normal limits with the exception of impulse control being grossly inadequate. GAF was established at 55.

Department A, Report, [REDACTED], 12/22/06. In April 2007, mental health treatment notes indicate claimant is being treated for major depressive disorder, generalized anxiety disorder, and impulse control disorder. He is taking medication and reports they work reasonably well. He is observed to much less agitated. He is slightly depressed and anxious. Affect is labile.

Cognition is alert and oriented X3. Speech is normal rate, rhythm, and volume. He exhibits less hyperverbality. Insight and judgment are poor. Claimant A, Report, [REDACTED], 4/13/07.

(11) January 3, 2007, claimant underwent an independent physical examination. A narrative report was prepared that states, in pertinent part, that claimant was difficult to assess due to complaints of pain and inability to perform range of motion assessments. Doctor observed heart to have regular rate and rhythm with no murmurs or gallup. Lungs expansion was 5cm and normally resonant on percussion. Bronchovesicular breath sounds and expiratory rhonchi of the bilateral chest. Abdomen is within normal limits. Lower extremities have no edema or clubbing. Peripheral pulses are well felt. Claimant refused to perform cervical range of motion maneuvers. In lumbar spine, he has no local tenderness or deformity. He bends to 30 degrees, extension to 10 degrees. With right and left lateral bending he moves to 10 degrees on

either side. On bilateral shoulder exam, he raises up to 30 degrees and states he cannot raise his arms further. Other joints overall showed no evidence of inflammatory arthritis or swelling. He is able to do heel and toe walking. Cranial nerves are nonfocal. Motor strength is 5/5 in upper and lower extremities bilaterally. Reflexes are symmetrically absent. No evidence of incoordination. Doctor's diagnosis is chronic neck and back pain. Doctor did not view MRI or x-ray reports. Department A, Report, [REDACTED], 1/3/07.

(12) MRI of the cervical spine taken on January 9, 2007 reveal broad based disc protrusion at C6-7 on the right which has features that would indicate an acute process. No evidence of central spine stenosis or compromise of exiting nerve roots. Department A, page 13. February 20, 2007, claimant underwent an MRI of the lumbar spine that revealed possible small right lateral broad protrusion at L4-L5 along the superior margin of the disc, but this is not causing significant stenosis; the central canal is overall borderline small at the level of L3-L4 due to developmental considerations; the study is otherwise unremarkable.

(13) June 19, 2007, claimant underwent sleep study. A report was prepared that states claimant has severe obstructive sleep apnea with significant but incomplete response to CPAP pressure 15cm; no periodic limb movement disorder; no cardiac dysrhythmia, parasomnia or seizure activity; no persistent nocturnal hypoxemia. Department A, page 14-15.

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 400.10, *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).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, 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 set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.

- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms)... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these 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).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis,

what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

If an individual fails to cooperate by appearing for a physical or mental examination by a certain date without good cause, there will not be a finding of disability. 20 CFR 416.994(b)(4)(ii).

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Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

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If an individual fails to cooperate by appearing for a physical or mental examination by a certain date without good cause, there will not be a finding of disability. 20 CFR 416.994(b)(4)(ii).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant is not engaged in substantial gainful activity and so is not disqualified from receiving disability at Step 1.

At Step 2, the objective medical evidence of record indicates that claimant has major depressive disorder, recurrent, severe, without psychotic features, anxiety disorder, and impulse control disorder. At initial assessment, claimant was oriented X3 with calculation, abstract thinking, and intelligence intact. Speech and stream of thought were within normal limits. Affect was anxious, hostile, depressed, and sad. Body movements were slow and decreased.

Recent and remote memory were impaired. Immediate memory was intact. He was treated with medication and his condition improved within a few months. Finding of Fact 10.

At Step 2, an attempt was made to assess claimant's functional abilities, but claimant did not perform some maneuvers requested of him. Claimant was able to heel and toe walk, Motor strength is 5/5 in upper and lower extremities bilaterally. Cranial nerves are nonfocal. Reflexes are symmetrically absent. Claimant demonstrated limited range of motion in his cervical, shoulder, and lumbar regions. MRI and x-ray reports indicate claimant has a broad based disc protrusion at C6-7. There is no evidence of central spine stenosis or compromise of exiting nerve roots. Claimant has possible small right lateral broad based protrusion at L4-L5 with no significant stenosis. Thus, claimant's limited function at assessment is not corroborated by the objective medical evidence which does not reveal spinal stenosis or compromise of nerve roots. Claimant has severe obstructive sleep apnea which was significantly, but not completely resolved with use of CPAP. Finding of Fact 10-13.

At Step 2, the objective medical evidence of record is not sufficient to establish that claimant has severe impairments that have lasted or are expected to last 12 months or more and prevent employment at any job for 12 months or more. Therefore, claimant is disqualified from receiving disability at Step 2.

At Step 3, claimant's impairments do not rise to the level necessary to be specifically disabling by law.

At Step 4, claimant's past relevant employment has been as a pizza cook, gas station clerk and manager, and doing factory labor. The objective medical evidence of record does not indicate a severe physical and/or cognitive impairment that would limit claimant's ability to perform simple work tasks. See discussion at Step 2, above. Finding of Fact 9-13.

At Step 4, the objective medical evidence of record is not sufficient to establish that claimant has functional impairments that prevent claimant, for a period of 12 months or more, from engaging in a full range of duties required by claimant's past relevant employment. Therefore, claimant is disqualified from receiving disability at Step 4.

Although claimant is disqualified at Step 4, the Administrative Law Judge will proceed through the Step 5 sequential evaluation process, *arguendo*, to determine whether claimant has the residual functional capacity to perform some other less strenuous work than required by claimant's past relevant employment.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor.... 20 CFR 416.967.

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).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be

very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls....

20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

At Step 5, the medical evidence of record indicates that claimant reports pain and limited range of motion in his upper body and lumbar spine. The objective medical evidence of record does not corroborate a medical reason for claimant's functional limitations at assessment. Claimant has severe obstructive sleep apnea which is significantly improved, but not resolved by CPAP treatment. Claimant has severe depression, anxiety, and impulse control disorder. His cognitive status is improved with treatment. See discussion at Step 2, above. Finding of Fact 10-13.

At Step 5, the objective medical evidence of record is sufficient to establish that claimant retains the residual functional capacity to perform at least simple work activities. Accordingly, claimant is not disabled and is disqualified from receiving disability at Step 5.

Claimant does not meet the federal statutory requirements to qualify for disability. Therefore, claimant does not qualify for Medical Assistance based on disability and the department properly denied claimant's application.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *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).

2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

Sec. 604 (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

- (a) Recipient of Supplemental Security Income, Social Security or Medical Assistance due to disability or 65 years of age or older.
- (b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.
- (c) A resident of an adult foster care facility, a home for the aged, a county infirmary, or a substance abuse treatment center.
- (d) A person receiving 30-day post-residential substance abuse treatment.
- (e) A person diagnosed as having Acquired Immunodeficiency syndrome (AIDs).
- (f) A person receiving special education services through the local intermediate school district.
- (g) A caretaker of a disabled person as defined in subdivision (a), (b), (e), or (f) above.

- (2) Applicants for and recipients of the State Disability Assistance program shall be considered needy if they:
 - (a) Meet the same asset test as is applied to applicants for the Family Independence Program.
 - (b) Have a monthly budgetable income that is less than the payment standard.
- (3) Except for a person described in subsection (1)(c) or (d), a person is not disabled for purposes of this section if his or her drug addiction or alcoholism is a contributing factor material to the determination of disability. 'Material to the determination of disability' means that, if the person stopped using drugs or alcohol, his or her remaining physical or mental limitations would not be disabling. If his or her remaining physical or mental limitations would be disabling, then the drug addiction or alcoholism is not material to the determination of disability and the person may receive State Disability Assistance. Such a person must actively participate in a substance abuse treatment program, and the assistance must be paid to a third party or through vendor payments. For purposes of this section, substance abuse treatment includes receipt of inpatient or outpatient services or participation in Alcoholics Anonymous or a similar program. 1995 PA 156, Sec. 605.
- (4) A refugee or asylee who loses his or her eligibility for the federal Supplemental Security Income program by virtue of exceeding the maximum time limit for eligibility as delineated in Section 402 of Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 U.S.C. 1612, and who otherwise meets the eligibility criteria under this section shall be eligible to receive benefits under the State Disability Assistance program.

After careful examination of the record and for reasons discussed at Steps 2-5, above, the Administrative Law Judge decides that claimant does not have severe impairments that prevent work for 90 days or more. Therefore, claimant does not qualify for SDA based on disability and the department properly denied his application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant has not established disability for Medical Assistance and State Disability Assistance.

Accordingly, the department's action is HEREBY UPHELD.

/s/ _____
Jana A. Bachman
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: [REDACTED] _____

Date Mailed: [REDACTED] _____

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 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.

JAB/db

cc: [REDACTED]