

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: 2007-25394

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

December 11, 2007

Ingham 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, an in-person hearing was held on December 11, 2007. Claimant was represented by [REDACTED]

ISSUE

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

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 28, 2007, claimant applied for MA. Claimant submitted medical records for department consideration.

(2) June 7, 2007, the Medical Review Team denied claimant's application.

Department Exhibit (Department) A.

(3) June 15, 2007, the department sent claimant written notice that the application was denied.

(4) August 9, 2007, the department received claimant's timely request for hearing.

(5) November 1, 2007, the State Hearing Review Team (SHRT) denied claimant's application. Department B.

(6) December 11, 2007, the in-person hearing was held. Prior to the close of the record, claimant requested the record be left open for submission of additional medical evidence. Claimant waived the right to a timely hearing decision. March 12, 2008, after review of all medical evidence, the SHRT again denied claimant's application. SHRT Decision, 3/12/08.

(7) Claimant asserts disability based on impairments caused by every part of his body having something wrong with it, including ADHD, COPD, heart disease, arthritis, and kidney failure.

(8) Claimant testified at hearing. Claimant is 44 years old, 5'8" tall, and weighs 168 pounds. Claimant completed 9<sup>th</sup> grade and a GED. He is able to read, write, and perform basic math. Claimant has a driver's license and is able to drive. He cares for his needs at home.

(9) Claimant's past relevant employment has been doing construction work.

(10) October 11, 2006, claimant underwent an independent psychological assessment and a report was prepared that states AXIS I diagnoses of depressive disorder, anxiety disorder, ADHD, alcohol dependence, in remission, marijuana dependence, in possible early remission, and cocaine dependence in possible early remission. At exam, claimant was oriented x3. Memory was within normal limits. Information, judgment, and abstraction were in average to

low average range. Doctor notes that reports of remission of drug dependence are by patient report. Department A, pages 149-152.

(11) April 25, 2007, claimant underwent an independent physical exam. A report was prepared that states, in pertinent part, that neck is supple without adenopathy or thyromegaly or bruits; heart has regular rate and rhythm; chest is clear with mild diminished breath sounds with no active rales, wheeze, or rhonchi; abdomen is soft, nontender, and benign, negative CVA tenderness; distal extremities have good pulses without any significant pedal edema; there is tenderness over the first CMC joints of the thumb/wrist, otherwise slow but full demonstration of range of motion of neck, back, shoulders, elbows, wrists, hands, hips, knees, and feet; cranial nerves are grossly intact; DTRs are +1 to +2 and symmetric; gait is non-antalgic. Premed FVC is 3.39; FEV1 is 2.70 indicative of mild restriction in a chronic smoker. Department A, pages 3-7.

(12) April 16, 2007, claimant was admitted to hospital for treatment of acute renal failure, delirium, anemia, pulmonary edema, substance abuse, hyperglycemia, and chronic pain. Claimant's renal function corrected very quickly. He was referred for out-patient substance abuse treatment due to drug screen being positive for [REDACTED], and [REDACTED] Claimant A, pages 1-10.

(13) August 15, 2007, claimant underwent MRI of the lumbar spine and a report was prepared that states findings of multilevel degenerative changes of the lumbar spine with no significant central canal stenosis at any level; mild facet hypertrophy in predominantly lower portion of lumbar spine with varying degrees of neural foraminal stenosis. Claimant A, page 20.

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).

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 some degenerative changes in his lumbar spine. Claimant has full range of motion in all joints and reflexes are +1 to +2 and symmetric. Claimant has mildly restrictive pulmonary function. He was treated for renal failure but quickly recovered. Claimant was diagnosed with depression and anxiety in 2006. He reported full remission of alcohol and partial remission of cocaine and marijuana dependence. He tested average to low average in cognitive functioning. Finding of Fact 10-13.

January 8, 2008, claimant's internist recommended severe physical restrictions, including occasional lifting of less than 10 pounds, standing/walking less than 2 hours in an 8

hour work day, occasional push with left or right hand, never grasping, inability to use right leg to operate foot controls, inability to climb stairs, kneel, crouch, and crawl. Claimant's internist indicates that claimant is not significantly impaired or moderately impaired in 20 of 20 areas of functioning. The record does not indicate that doctor performed a full psychological assessment. Claimant A, pages 11-29. Internist's recommendations for severe restrictions are not consistent with the objective medical evidence and claimant's physical capabilities as demonstrated at other physical exams. Internist does not specialize in psychology and did not perform a full mental assessment. Accordingly, internist's recommendations must be given less legal weight than the objective medical evidence of record and opinions of psychologist.

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 in construction. 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.

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 objective medical evidence of record indicates that claimant has degenerative changes in his lumbar spine. He has mildly restrictive pulmonary function. Claimant has average to low average cognitive functioning. 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 light work activities. Considering claimant's Vocational Profile (limited education, history of skilled work, and younger individual) and relying on Vocational Rule 202.18, claimant is not disabled. Therefore, claimant 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.

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.

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: August 24 2009

Date Mailed: August 25, 2009

**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

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