

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: 2008-14926
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 26, 2008
Ogemaw 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 June 26, 2008.

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) November 27, 2007, claimant applied for MA and SDA. Claimant submitted medical records for department consideration.

(2) June 25, 2008, the Medical Review Team denied claimant's application.

Department Exhibit (Department) A.

(3) January 30, 2008, the department sent claimant written notice that the application was denied. Department C.

(4) February 5, 2008, the department received claimant's timely request for hearing.

(5) May 9, 2008, the State Hearing Review Team (SHRT) denied claimant's application. Department B.

(6) June 26, 2008, the telephone hearing was held. Prior to the closing of the record, claimant requested the record be left open for additional medical evidence. Claimant waived his right to a timely hearing decision. August 22, 2008, after review of all medical evidence, the SHRT again denied claimant's application. SHRT Decision, 8/22/08.

(7) Claimant asserts disability based on impairments caused by arthritis, scoliosis, tendonitis in the shoulder, bad knees, PTSD, bipolar disorder, depression, gastritis, diverticulitis, and colitis.

(8) Claimant testified at hearing. Claimant is 46 years old, 5' 10" tall, and weighs 240 pounds. Claimant completed 12th grade and is able to read, write, and perform basic math. Claimant has a driver's license but does not drive due to pain in back and numbness in hands. Claimant is able to care for his needs at home.

(9) Claimant's past relevant employment has been as a machinist, dairy farm hand, factory foreman, short order cook, and caregiver.

(10) September 7, 2007 shoulder x-ray revealed minimal acromioclavicular joint degenerative changes. Department A, page 69. October 29, 2007 MRI of left shoulder revealed mild infraspinatus tendinosis, no rotator cuff tear, and moderate acromioclavicular joint

degenerative changes. Department A, page 75. February 13, 2008, claimant was examined by his physician. Treatment notes indicate claimant had a steroid injection to his left shoulder joint with considerable success. Department A, Progress Note.

(11) September 20, 2007, x-ray of right knee revealed negative x-rays of right knee. Department A, page 70. September 20, 2007 x-ray of left knee revealed negative x-rays of left knee. Department A, page 71. On or about December 17, 2007, claimant was examined by a physician who notes that claimant has tenderness to palpation over the patellar tendon and over the medial joint compartment; weakness of bilateral hips; and left lumbar right thoracic curve with leg length discrepancy of 1/2 inch causing mechanical stress to knee joints. Doctor notes claimant has pain, decreased range of motion and deficits in stability, strength, gait, advanced gait, and activities of daily life. Department A, pages 18-19. December 17, 2007, claimant was referred for exercise program and knee braces due to patellofemoral syndrome. Department A, pages 25, 51. Functional assessment conducted by a physical therapist revealed the following: Strength: right hip 4/5, left hip 4/5, left knee 4+/5, right knee 4+/5, ankle 4+/5; Range of Motion: left knee 120 to -10, right knee 120 to -5, reflexes: +1 bilateral lower extremities, Sensation: WFL for light touch, sharp and dull in all dermatome levels in bilateral lower extremities; Functional Balance: negative for Romberg, difficulty with single leg stance. Department A, pages 2-7.

(12) September 20, 2007, x-rays of claimant's cervical spine revealed moderate lower cervical spine degenerative changes and no subluxation. Department A, page 72.

(13) October 29, 2007, MRI of claimant's orbits revealed no foreign body is identified overlying the orbits; no bony or soft tissue abnormality is identified. Department A, page 74.

(14) March 5, 2008, claimant underwent a colonoscopy that revealed hemorrhoids, diverticuli, and 2 polyps. Surgical Information, 3/19/08. September 20, 2007, claimant underwent chest x-rays that revealed no evidence of acute cardiopulmonary disease. Department A, page 73.

(15) September 10, 2007, claimant presented to clinic requesting evaluation and treatment for anger, depression, mood swings, and trouble keeping jobs. Department A, pages 44-46. Claimant returned for evaluation appointment on October 5, 2007. Evaluation notes indicate claimant is alert and oriented X3. Grooming and hygiene are appropriate. Mood is depressed and affect is blunted but with minimal to moderate range of emotion. Cognitive functioning appears within normal limits. Memory is intact and speech is of normal rate and rhythm. Thought processes are logical and organized. Judgment is reportedly fair to good. Impulse control is fair; insight is fair to good. No diagnoses are stated. Department A, pages 40-41. Claimant is taking [REDACTED] to assist with sleeping. Department A, page 37. On November 26, 2007, claimant reported disturbed sleep and waking up angry. He appeared alert and oriented X3 with depressed/irritable mood and constricted blunted affect. Department A, page 29. December 2007 treatment notes state similar observations. Department A, page 27. January 8, 2008 treatment notes indicate AXIS I diagnoses of mood disorder NOS, PTSD, and alcohol abuse in remission. GAF was assessed at 59. Department A, pages 8-13. March 19, 2008, psychological treatment notes indicate that claimant is alert and oriented X4 with adequate reality testing, normal speech quantity, cooperative attitude, logical and coherent thought processes, adequate memory, fair judgment and insight, and mildly impaired concentration and attention. April 24, 2008, psychological treatment notes indicate claimant was alert and oriented X3. Affect was blunted. June 11, 2008, psychological treatment notes

indicate claimant is oriented X4. He has fair hygiene and normal posture. He does not appear to be in any distress. Speech quantity was normal. Attitude and general behavior were cooperative. Affect was restricted and mood was anxious. Thought process was logical and coherent. Reality testing was adequate. Attention and concentration were mildly impaired. Memory was adequate; judgment and insight were fair. Claimant A, Progress Note.

(16) After the record was closed and the SHRT had rendered its second decision, claimant submitted a discharge summary for admission to the record. The record indicated during September and October 2008, claimant was treated at hospital for approximately one month for diverticulitis. After claimant did not respond to conservative treatment, he underwent placement of sigmoid colectomy and placement of end colostomy. Claimant's physician released him to full activity as tolerated and avoidance of heavy lifting. As such, it is apparent that the new information does not have a material impact on the medical evidence of record or the determination of his disability. Accordingly, the no good cause was found to reopen the record for admission of the document.

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 minimal to moderate acromioclavicular degenerative changes and mild infraspinatus tendinosis in his left shoulder. Claimant had a steroid injection to his left shoulder joint with considerable success. X-rays revealed that claimant has moderate lower cervical spine degenerative changes. The record does not indicate that claimant has ongoing severe limitations or impairments due to this condition. Claimant has tenderness to palpation over the patellar tendon and over the medial joint compartment; weakness of bilateral hips; and left lumbar right thoracic curve with leg length discrepancy of 1/2 inch causing mechanical stress to knee joints. Doctor notes claimant has pain, decreased range of motion and deficits in stability, strength, gait, advanced gait, and activities of daily life. Claimant was referred for exercise program and knee braces due to patellofemoral syndrome. Functional assessment conducted by a physical therapist revealed the following: Strength: right hip 4/5, left hip 4/5, left knee 4+/5, right knee 4+/5, ankle 4+/5; Range of Motion: left knee 120 to -10, right knee 120 to -5, reflexes: +1 bilateral lower extremities, Sensation was intact for light touch, sharp and dull in all dermatome levels in bilateral lower extremities. Romberg was negative. Claimant had difficulty with single leg stance. Finding of Fact 10-14.

At Step 2, claimant is being treated for mood disorder, PTSD, and alcohol abuse, in remission. At initial evaluation, claimant was alert and oriented X3. Grooming and hygiene

were appropriate. Mood was depressed and affect was blunted. Cognitive functions were within normal limits. Treatment notes indicate claimant continued to have depressed mood and blunted affect with normal cognitive functions. Finding of Fact 15.

It is noted that after the record was closed and the SHRT had rendered its second decision, claimant sent a discharge summary for admission to the record. The record indicated he was treated at hospital for approximately one month for treatment of diverticulitis, did not respond to treatment, and finally underwent placement of sigmoid colectomy and placement of end colostomy. Claimant's physician released him to full activity as tolerated and avoidance of heavy lifting. As such, it is apparent that the new information does not have a material impact on the medical evidence of record or the determination of his disability. Accordingly, the no good cause was found to reopen the record for admission of the document. Finding of Fact 16.

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 machinist, dairy farm hand, factory foreman, short order cook, and caregiver. The objective medical evidence of record establishes that claimant has bilateral weakness in his hips, decreased range of motion, and deficits in his strength, stability, gait, advanced gait, and activities of daily life. He was treated for tendinosis of the left shoulder with much success. See discussion at Step 2, above. Finding of Fact 9-15.

At Step 4, the duties of claimant's past relevant employment normally require good range of motion in the hips, stability of gait, and considerable strength in the lower extremities. Accordingly, the objective medical evidence of record is 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 not 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 weakness and loss of range of motion in his lower extremities. He has depression and PTSD, but his cognitive functions are within normal limits. See discussion at Step 2, above. Finding of Fact 10-15.

At Step 5, the objective medical evidence of record is sufficient to establish that claimant retains the residual functional capacity to perform at least sedentary activities. Considering claimant's Vocational Profile (younger individual, high school education, and history of skilled and unskilled work) and relying on Vocational Rule 201.21, 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.

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 2-3, and 5, above, the Administrative Law Judge decides that claimant does not have severe impairments that prevent work for 90 days or more for any period of time that includes his application date. 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: June 16, 2009

Date Mailed: June 17, 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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