

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: 2008-30451
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
December 16, 2008
Kalamazoo County DHS

ADMINISTRATIVE LAW JUDGE: Jana Bachman

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 claimant's request for a hearing. After due notice, an in-person hearing was held on December 16, 2008. Claimant was represented by [REDACTED].

ISSUE

Whether claimant has established disability for 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) April 29, 2008, claimant applied for MA and retroactive MA.
- (2) June 2, 2008, the Medical Review Team (MRT) denied claimant's application.

Department Exhibit A.

- (3) June 5, 2008, the department sent claimant written notice that the application was denied.

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

(5) September 17, 2008, the State Hearing Review Team (SHRT) denied claimant's application. Department Exhibit B.

(6) December 16, 2008, the in-person hearing was held. Prior to the close of the record, claimant requested the record be left open for additional medical evidence. Claimant waived the right to a timely hearing decision. April 3, 2009, following review of all medical evidence, the SHRT again denied claimant's application. SHRT Decision, 4-3-09.

(7) Claimant asserts disability based on impairments caused by depression, anxiety, post traumatic stress disorder, mood disorder, attention deficit hyperactive disorder and back injury.

(8) Claimant testified at hearing. Claimant is 28 years old, 6' tall, and weighs 160 pounds. Claimant completed the 8th grade and is able to read, write, and perform basic math. Claimant has a driver's license and is able to drive. Claimant cares for his needs at home.

(9) Claimant's past relevant employment has been performing general labor and factory work.

(10) December 31, 2007, claimant presented to ER complaining of low back pain. Objective medical testing revealed pain was likely due to back sprain. Department Exhibit A, pgs 32-41. January 18, 2008, claimant underwent a microdiscectomy at L4-L5. Post surgical MRI revealed spinal cord and conus medullaris to have no T2-signal abnormality. Conus appeared normal in configuration. January 27, 2008, claimant was readmitted to hospital indicating his leg pain continued and he had urinary retention. MRI of the lumbar spine did not show any disc herniation. There were post surgical and degenerative changes at L4-L5 but no evidence of any neural compromise and no significant change from previous studies. Claimant

was discharged on January 29, 2008. Department Exhibit A, pgs 78-126. March 3, 2008, claimant's family physician completed a Medical Examination Report (DHS-49). Following physical examination that took place February 22, 2008. Current diagnoses were low back pain, pain status post laminectomy, and urinary retention. Doctor indicates a normal physical exam with the following exceptions: Slow gait, reduced sensation in strength in the lower left extremity. Doctor opines that claimant will have the following limitations for less than 90 days: Occasional lifting of 10 pounds, stand and/or walk less than 2 hours in an 8 hour day, sit about 6 hours in an 8 hour day, perform simple grasping and fine manipulation with both upper extremities, no pushing, pulling, or reaching. No operating foot and leg controls with either lower extremity. Due to severe back pains status post laminectomy. Department Exhibit A, pgs 70-78.

(11) June 2, 2008, claimant was admitted to hospital following suicide attempt. Axis I diagnoses were dysthymic disorder, PTSD, panic attacks, social anxiety, and cannabis abuse. GAF was assessed at 60. Claimant was treated and discharged on June 5, 2008. Claimant Exhibit A, pgs A1-12. August 14, 2008, claimant underwent an initial psychiatric evaluation. The narrative report indicates an Axis I diagnoses of anxiety disorder, history of post traumatic stress disorder, depressive disorder, rule-out dysthymia, panic disorder with agoraphobia, rule-out social anxiety, history of cannabis abuse; rule-out polysubstance dependence. GAF was assessed at 55 to 60. At exam, claimant was neat and well groomed. He was alert and oriented. Attention and concentration seemed fine. Thought process was linear, coherent and goal directed. Thought content was mostly regarding his hard life, past abuse, and depression. No delusions or hallucinations. Speech was regular rate and rhyme. Mood seemed depressed and affect blunted. No suicidal or homicidal ideation. No auditory or visual hallucinations. No

delusions. Insight was fair and judgment seemed somewhat fair. Claimant Exhibit A, pgs. B1-B2. September 11, 2008 Medication Review revealed claimant to have depressed mood and blunted affect. Occasional suicidal ideation but contracts to safety with no plan. Judgment and insight seem fair. Impulse control is fair. GAF was assessed to 45 to 50. Claimant Exhibit A, pgs B5-B6.

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, in December 2007, claimant was treated at hospital for back pain. During January 2008, claimant underwent a microdiscectomy at L4-L5. He reported no relief from pain. In February 2008 continued to have some weakness in his lower left extremity and a slow gait. Claimant was hospitalized during June of 2008 due to an apparent suicide attempt. Psychiatric evaluations indicate claimant has Axis 1 diagnoses of dysthymic disorder or depressive disorder PTSD, panic attacks, social anxiety, and cannabis abuse. Claimant may have anxiety disorder

with agoraphobia. At exams, claimant was oriented x 3. He appeared to have depressed mood and flat affect. Impulse control, judgment, and insight seem fair. GAF was assessed from 60 to 45 during June through September 2008. Finding of Fact 10-11.

At Step 2, the objective medical evidence of record is not sufficient to establish that claimant has physical and/or cognitive impairments that have lasted or are expected to last 12 months or more and prevent all employment for 12 months or more. Accordingly, 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 performing factory labor and general labor. See discussion at Step 2 above. Finding of Fact 9-11.

At Step 4, the objective medical evidence of record is not sufficient to establish that claimant has physical and/or cognitive impairments that have lasted or are expected to last for a period of 12 months or more and would prevent him from performing a full range of duties required by claimant's past relevant employment doing general labor provided heavy lifting is not required. Accordingly, 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, see discussion at Step 2 above. Finding of Fact 10-11.

At Step 5, the objective medical evidence of record is sufficient to establish that claimant is capable of performing at least light work duties. Considering claimant's Vocational Profile (younger individual, limited education, and history of unskilled work) and relying on Vocational

Rule 202.17, claimant is not disabled. Accordingly, claimant is disqualified from receiving disability at Step 5.

Claimant does not meet the federal statutory requirements to qualify for disability. Accordingly, claimant does not meet the disability requirements to qualify for Medical Assistance 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 claimant has not established disability for Medical Assistance.

Accordingly, the department's action is, hereby, UPHELD.

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

Date Signed: August 18, 2010

Date Mailed: August 19, 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 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.

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