

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: 2008-16216  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
July 1, 2008  
Cass County DHS

ADMINISTRATIVE LAW JUDGE: Jana B. 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 July 1, 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) December 3, 2007, claimant applied for MA and was due for medical review on his SDA. Claimant submitted medical records for department consideration.

(2) January 7, 2008, the Medical Review Team denied claimant's application and medical review. Department Exhibit (Department) A.

(3) [REDACTED], the department sent claimant written notice that the application and medical review was denied. Department C.

(4) [REDACTED], the department received claimant's timely request for hearing.

(5) May 2, 2008, the State Hearing Review Team (SHRT) denied claimant's application. Department B.

(6) [REDACTED], the telephone hearing was held. Prior to the close of the record, claimant submitted additional medical records. He waived his right to a timely hearing decision. August 22, 2008, the SHRT again denied claimant's application. SHRT Decision, 8/22/08.

(7) Claimant asserts disability based on impairments caused by mental illness and a bad back.

(8) Claimant testified at hearing. Claimant is 37 years old, 6' tall, and weighs 145 pounds. Claimant completed 6<sup>th</sup> grade and has few reading, writing, and basic math skills. He does not have a driver's license.

(9) Claimant's past relevant employment has been as a welder.

(10) On or about February 2008, claimant reapplied for MA and SDA. His application was approved for MA, retroactive MA for all three months prior to the month of application, and SDA.

(11) [REDACTED], at last positive SDA medical decision, claimant was suffering from fractured right hand. Department A, page 37. Medical review was set for [REDACTED].

(12) [REDACTED], at SDA medical review, claimant underwent an independent medical exam. A narrative report was prepared that states the following, in pertinent part: visual acuity was 20/30 without corrective lenses, bilaterally; chest has prolonged expiratory phase,

breath sounds are clear and symmetrical, no accessory muscle use; heart has regular rate and rhythm with no enlargement; bowel sounds are normal; peripheral pulses are intact, no clubbing, cyanosis, or edema detected; no evidence of joint laxity, crepitation or effusion, grips strength is intact, dexterity is unimpaired, mild difficulty getting on/off exam table, heel and toe walking, and squatting; cervical and lumbar spine straightening due to pain with diffuse paravertebral spasms; range of motion in cervical spine was reduced, as was range of motion in dorsolumbar spine. Claimant has a hunched posture and appears to have pain. There were no radicular symptoms or neuropathy. Medical treatment was recommended. Mental status appeared stable and claimant was oriented x3 with intact memory, concentration, insight, and judgment.

Department A, pages 15-20.

(13) At review, claimant's fractured right hand has improved and his dexterity is unimpaired. Finding of Fact 13.

(14) At review, claimant's medical improvement is related to his ability to work. His right hand was fractured and in a cast. Accordingly, he had little use of the hand for performing work tasks. At review, his hand is fully functional and he is able to perform normal actions with the hand. Finding of Fact 13.

(15) At review, claimant provided new medical evidence to establishing that he has diffuse muscle spasms in his back and limited cervical and dorsolumbar range of motions. He gives the appearance of being in pain and had mild difficulty performing physical assessment tasks. No neurological deficits were observed. Finding of Fact 13.

(16) At review, claimant has new physical impairments that are work related, but not so serious as to prevent all employment for 90 days or more.

(17) [REDACTED], claimant's physician completed a [REDACTED] [REDACTED] following physical exam that took place on [REDACTED]. The report indicates diagnoses of

schizophreniform disorder, bipolar depression, nephrolithiasis, history of closed head injury, COPD, substance abuse, and degenerative disc disease. Claimant underwent [REDACTED], [REDACTED] of the brain, and cardiac stress echo, all of which were normal. Claimant had reduced flexion to 45 degrees and extension to 0 degrees in his back. He could not heel and toe walk. Doctor advised use of a cane to ambulate. Doctor opined that claimant was cognitively limited in the following areas: comprehension, sustained concentration, memory, following simple directions, reading/writing, and social interaction. Claimant A, pages 1-2.

(18) [REDACTED], claimant underwent an initial psychological assessment. A narrative report was prepared that states an AXIS I diagnosis of psychotic disorder NOS. Claimant's appearance was disheveled. His demeanor was mistrustful and withdrawn. He avoided eye contact. Speech was slurred and slowed; activity was slowed. Thought content was phobic and guarded. Claimant reports auditory and visual hallucinations. He was not oriented to time or place. Intellectual functioning was below average and there was impairment of memory, concentration, attention, and ability to abstract. He exhibited limited insight and coping abilities. Assessor opined that claimant is unable to maintain self direction and learning/recreation; he requires assistance in activities of daily living and interpersonal function. Assessor indicates there is evidence of 6 continuous months of illness, Symptomology, and/or dysfunction and opines that there is a reasonable expectation that symptoms will continue for more than 6 months. Claimant A, pages 14-20. In [REDACTED], claimant's treating professional opines that claimant continues to have auditory hallucinations and constant suicidal ideation. GAF was assessed at 38. Claimant A, page 6. [REDACTED] - [REDACTED] completed on [REDACTED], indicates claimant is markedly impaired in all but one of 20 areas of functioning. Claimant A, pages 4-5.

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).

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- (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).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

**Medical improvement.** Medical improvement is any decrease in the medical severity of your impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled. A determination that there has been a decrease in medical severity must be based on changes (improvement) in the symptoms, signs and/or laboratory findings associated with your impairment(s).... 20 CFR 416.994(b)(1)(i).

**Medical improvement not related to ability to do work.** Medical improvement is not related to your ability to work if there has been a decrease in the severity of the impairment(s) as defined in paragraph (b)(1)(i) of this section, present at the time of the most recent favorable medical decision, but no increase in your functional capacity to do basic work activities as defined in paragraph (b)(1)(iv) of this section. If there has been any medical improvement in your impairment(s), but it is not related to your ability to do work and none of the exceptions applies, your benefits will be continued.... 20 CFR 416.994(b)(1)(ii).

**Medical improvement that is related to ability to do work.** Medical improvement is related to your ability to work if there has been a decrease in the severity, as defined in paragraph (b)(1)(i) of this section, of the impairment(s) present at the time of the most recent favorable medical decision **and** an increase in your functional capacity to do basic work activities as discussed in paragraph (b)(1)(iv) of this section. A determination that medical improvement related to your ability to do work has occurred does not, necessarily, mean that your disability will be found to have ended unless it is also shown that you are currently able to engage in substantial gainful activity as discussed in paragraph (b)(1)(v) of this section.... 20 CFR 416.994(b)(1)(iii).

**Functional capacity to do basic work activities.** Under the law, disability is defined, in part, as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment(s).... 20 CFR 416.994(b)(1)(iv).

...A decrease in the severity of an impairment as measured by changes (improvement) in symptoms, signs or laboratory findings can, if great enough, result in an increase in the functional capacity to do work activities.... 20 CFR 416.994(b)(1)(iv)(A).

When new evidence showing a change in signs, symptoms and laboratory findings establishes that both medical improvement has occurred and your functional capacity to perform basic work activities, or residual functional capacity, has increased, we say

that medical improvement which is related to your ability to do work has occurred. A residual functional capacity assessment is also used to determine whether you can engage in substantial gainful activity and, thus, whether you continue to be disabled... 20 CFR 416.994(b)(1)(iv)(A).

...Point of comparison. For purposes of determining whether medical improvement has occurred, we will compare the current medical severity of that impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled to the medical severity of that impairment(s) at that time.... 20 CFR 416.994(b)(1)(vii).

...If medical improvement has occurred, we will compare your current functional capacity to do basic work activities (i.e., your residual functional capacity) based on the previously existing impairments with your prior residual functional capacity in order to determine whether the medical improvement is related to your ability to do work. The most recent favorable medical decision is the latest decision involving a consideration of the medical evidence and the issue of whether you were disabled or continued to be disabled which became final. 20 CFR 416.994(b)(1)(vi).

...Medical improvement. Medical improvement is any decrease in the medical severity of impairment(s) present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled and is determined by a comparison of prior and current medical evidence which must show that there have been changes (improvement) in the symptoms, signs or laboratory findings associated with that impairment(s). 20 CFR 416.994(b)(2)(i).

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, at review in [REDACTED] claimant's physical impairments were medically improved or non-severe. Finding of Fact 12-16.

At Step 2, the objective medical evidence of record establishes that in [REDACTED] claimant was diagnosed with Psychotic Disorder NOS. His treating professional opined that there was evidence of claimant's symptoms and illness during the 6 months prior to the evaluation and a reasonable expectation that they would continue for 6 more months. In [REDACTED]

█████ claimant had shown no improvement and continued to suffer from auditory hallucinations and suicidal ideation. He was markedly impaired in 19 of 20 areas of functioning. Finding of Fact 17-18.

At Step 2, the objective medical evidence of record is sufficient to establish that during █████, claimant had severe mental 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 not 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 welder. The objective medical evidence of record establishes that claimant's physical impairments were improved and/or non-severe at the time of his medical review in █████. Finding of Fact 9-15.

At Step 4, objective medical evidence of record establishes that, in █████, claimant had psychotic disorder and was markedly impaired in all but one area of functioning. Claimant's condition appeared to have been of at least 6 months duration and was expected to continue at least 6 more months. Finding of Fact 17-18.

At Step 4, the objective medical evidence of record is sufficient to establish that claimant has severe cognitive 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 there has been medical improvement of claimant's physical condition (fractured right hand) and he no longer has any limitation or impairment due to this condition as of [REDACTED]. Claimant's other physical

impairments are not severe so as to prevent all work. See discussion at Step 2, above. Finding of Fact 12-16.

At Step 5, the objective medical evidence of record establishes that claimant has psychotic disorder NOS. His condition had been in evidence for the previous 6 months and was expected to continue at least 6 months more. In [REDACTED], claimant was not improved and continued to be markedly impaired in 19 of 20 areas of functioning. His GAF was established at 38, indicative of impairment in reality testing or impairment in speech and communication. Claimant A, page 7; [REDACTED]. See discussion at Step 2 and 4, above. Finding of Fact 17-18.

At Step 5, the objective medical evidence of record is sufficient to establish that claimant has a non-exertional impairment, mental illness, that prevents him from performing work activities. Accordingly, claimant is disabled. Therefore, claimant is not disqualified from receiving disability at Step 5.

Claimant meets the federal statutory requirements to qualify for disability. Therefore, claimant meets the disability requirements for Medical Assistance based on disability.

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 has severe impairments that prevent work for 90 days or more. Therefore, claimant meets the disability requirements to qualify for SDA based on disability effective his [REDACTED] medical review.

#### DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant has established disability for Medical Assistance and State Disability Assistance.

Accordingly, the department's action is HEREBY REVERSED. The department is to initiate a determination of claimant's financial eligibility for MA beginning with the earliest retroactive month prior to his [REDACTED] application in compliance with this decision and order and department policy. If it has not already done so, the department is to initiate a determination of claimant's financial eligibility beginning with his previous medical review month of [REDACTED]. If otherwise eligible, claimant's medical review date is set at [REDACTED]

