

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: 2008-17399
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 16, 2008
Washtenaw 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 July 16, 2008. 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) November 16, 2007, claimant applied for MA. Claimant submitted medical records for department consideration.
- (2) December 28, 2007, the Medical Review Team denied claimant's application.
Department Exhibit (Department) A.

(3) [REDACTED], the department sent claimant written notice that the application was denied.

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

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

(6) [REDACTED], the in-person hearing was held. After the close of the record, claimant's representative requested the record be reopened for admission of additional medical evidence. August 21, 2008, the SHRT again denied claimant's application. SHRT Decision, 8/21/08.

(7) Claimant asserts disability based on alcohol abuse, depression, anxiety, deafness in left ear, no sense of smell, shoulder and back problems, hypertension, and seizures.

(8) Claimant testified at hearing. Claimant was 42 years old, 5'10" tall, and weighed 213 pounds. Claimant completed a GED and was able to read, write and perform basic math. Claimant had a driver's license and was able to drive. He was able to care for his needs at home.

(9) Claimant's past relevant employment was doing factory work and dishwashing.

(10) On or about [REDACTED], the Administrative Law Judge received documentation that claimant was deceased on [REDACTED]. Cause of death is not listed.

[REDACTED]

(11) [REDACTED], claimant was admitted to hospital due to hematemesis, alcohol withdrawal, chronic alcohol abuse, and alcoholic gastritis. He was treated and discharged on [REDACTED]. Department A, pages 78-83. [REDACTED], claimant was admitted to hospital due to chronic alcohol abuse and suicide attempt. Final Diagnoses were alcohol abuse, depression vs. substance induced mood disorder. He was treated and discharged on [REDACTED].

Department A, pages 56-77. [REDACTED], claimant was admitted to hospital due to alcohol withdrawal and chronic alcohol abuse. He was treated and discharged on [REDACTED]

Department A, pages 45-55. [REDACTED], claimant was admitted to hospital due to alcohol withdrawal and chronic alcohol abuse. He was treated and discharged on [REDACTED]

[REDACTED]. Department A, pages 33-44. [REDACTED], claimant was admitted to hospital due to alcohol intoxication and fractured humerus. Objective medical testing revealed redemonstration of gliotic changes involving right frontal and right frontotemporal regions, redemonstration of post traumatic changes involving frontal bone, frontal sinuses, nasal bones, and orbital walls with metallic wires in the frontal bone; no acute displaced fracture from C1 through T3 is visualized; ligamentous injury can not be ruled out; degenerative intervertebral disc changes noted at the C6-C7 level without bony spinal canal or neural foramina stenosis; redemonstration of left perous apex mass, similar in configuration to [REDACTED] exam. Claimant was discharged [REDACTED]. Department A, pages 27-32.

(12) [REDACTED], claimant underwent an initial psychological assessment. Claimant's doctor completed a [REDACTED] following the assessment, indicating AXIS I diagnoses of depressive disorder, alcohol dependence in early full remission [by claimant report], cocaine abuse in early full remission [by claimant report] and social phobia. GAF was assessed at 55. Doctor indicated that claimant was not limited, not significantly limited, or moderately limited in 20 of 20 areas of functioning. Claimant told doctor that he had used alcohol, crack cocaine, opiates, and marijuana and that his longest period of recovery was 3 weeks. He reported a history of seizures when withdrawing. Doctor observed claimant's speech to be normal and spontaneous. His manner was cooperative.

Kinetics were normal. Affect was euthymic. Thought content was logical. He was oriented X3 with fair insight and judgment. Department A, pages 11-20.

(13) [REDACTED], claimant's doctor completed a second [REDACTED] [REDACTED] Doctor reports seeing claimant 1X per month since [REDACTED] and had last seen him on [REDACTED] Doctor indicates AXIS I diagnoses of depressive disorder, alcohol dependence, social phobia, anxiety disorder, and cocaine dependence in full remission. GAF was assessed at 50. Doctor reports claimant has fair grooming, restricted affect, low mood, poor memory, recent suicidal thoughts, and no psychosis. Claimant A.

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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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).

Death establishes a person's disability for the month of his death. Program Eligibility Manual (PEM) 260.

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 had numerous alcohol related admissions to hospital in [REDACTED]. At each admission, he was treated for withdrawal symptoms and released. During his [REDACTED] admission, we was treated for a fractured humerus, in addition to alcohol withdrawal. During [REDACTED], he was evaluated by a psychiatrist who diagnosed claimant with depressive disorder, alcohol dependence in early full remission [by claimant report], cocaine abuse in early full remission [by claimant report] and social phobia. GAF was assessed at 55, indicative of moderate symptoms or difficulties. Doctor indicated that claimant was not limited, not significantly limited, or moderately limited in 20 of 20 areas of functioning. Claimant told doctor that he had used alcohol, crack cocaine, opiates, and marijuana and that his longest period of recovery was 3 weeks. Claimant reported a history of seizures when withdrawing. Doctor observed claimant's speech to be normal and spontaneous. His manner was cooperative. Kinetics were normal. Affect was euthymic.

Thought content was logical. He was oriented X3 with fair insight and judgment. [REDACTED], claimant's doctor indicates AXIS I diagnoses of depressive disorder, alcohol dependence, social phobia, anxiety disorder, and cocaine dependence in full remission. GAF was assessed at 50, indicative of serious symptoms or difficulties. Doctor reports claimant has fair grooming, restricted affect, low mood, poor memory, recent suicidal thoughts, and no psychosis. Doctor opined that claimant was markedly limited in 9 of 20 areas of functioning. Claimant expired on [REDACTED] due to causes not reported to the Administrative Law Judge. Finding of Fact 10-13; [REDACTED].

At Step 2, the objective medical evidence of record is 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 not disqualified from receiving disability at Step 2.

Federal Regulations provide that no finding of disability shall be made where drug and/or alcohol abuse is a material contributing factor to the disability. As discussed above, the objective medical evidence of record indicates claimant's AXIS I diagnoses include alcohol abuse (Finding of Fact 12-13). A preponderance of evidence establishes that alcohol abuse is a material contributing factor to claimant's asserted mental disability. Accordingly, no finding of disability will be made.

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 doing factory work and as a dishwasher. The record establishes a severe mental disability of at least 12 months duration. See

discussion at Step 2, above. Materiality of drug and/or alcohol abuse is cited as above. Finding of Fact 9-13.

At Step 4, claimant is disqualified from receiving disability at Step 4 due to materiality of drug/alcohol abuse.

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 objective medical evidence of record indicates that claimant has no physical limitations. Claimant's mental impairments appear to rise to the level of severity that would exclude all work. See discussion at Step 2, above. The materiality of drug and/or alcohol abuse is cited as at Step 2. Finding of Fact 10-13.

At Step 5, claimant is disqualified due to materiality of drug/alcohol abuse. Claimant meets criteria for disability in the month of his death, [REDACTED]. Finding of Fact 10; PEM 260.

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

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant did not establish disability for Medical Assistance prior to the month of his death in [REDACTED].

Accordingly, the department's action is PARTIALLY REVERSED. The department is to initiate a determination of claimant's financial eligibility for MA for the month of [REDACTED] in compliance with this decision and order and department policy.

/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]

2008-17399/jab

J. A. Bachman
Administrative Hearings (2)