

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER:

[REDACTED]

Reg No. 200914281
Issue No. 2009/4031
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: April 9, 2009
Clare 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 the claimant's request for a hearing. After due notice, an in-person hearing was held on April 9, 2009. Claimant was represented by [REDACTED]

ISSUE

Whether claimant has established disability for 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 a material fact:

1. July 23, 2008, claimant applied for MA, retroactive MA, and SDA.
2. October 30, 2008, the Medical Review Team (MRT) denied claimant's application. Department Exhibit A.
3. November 5, 2008, the department sent claimant written notice that the application was denied.
4. January 27, 2009, the department received claimant's timely request for hearing.

5. March 5, 2009, the State Hearing Review Team (SHRT) denied claimant's application. Department Exhibit B.
6. April 9, 2009, the in-person hearing was held. Prior to the close of the record, claimant submitted additional medical evidence. Claimant waived the right to a timely hearing decision. April 21, 2009, after review of all medical evidence, the SHRT again denied claimant's application. SHRT Decision, 4-21-09.
7. Claimant asserts disability based on impairments caused by depression, COPD, arthritis, a lung mass, bad knee, and hypertension.
8. Claimant testified at hearing. Claimant is 42 years old, 5'9" tall, and weighs 255 pounds. Claimant completed 11th grade and is able to read, write, and perform basic math. Claimant's driver's license is suspended. Claimant cares for his needs at home. .
9. Claimant's past relevant employment has been in construction.
10. During 2007, claimant was treated for major depression, rule out bipolar affective disorder, rule out Vicodin dependence, and marijuana dependence in early withdrawal. Treatment notes indicate claimant's affect was generally flat with the appearance of anger as well. Claimant reported sleeplessness and racing thoughts at times. He also reported panic attacks. Department Exhibit A, pgs 46-48.
11. February 13, 2008, claimant presented to hospital asserting inability to deal with everyday stressors. He was admitted to hospital due to suicidal ideation with plan to carry out. Psychological examination revealed major depressive disorder, recurrent, severe with vague psychotic features that appear to be negative ruminations: history of adjustment disorder with depression and anxiety; history of/rule out diagnosis of some type of bipolar disorder spectrum issues; marijuana abuse; and ten year suspected history of possible opiate and/or benzodiazepine abuse. GAF on discharge on 2/18/08 was 48. Treating professionals opined claimant engaged in medication seeking behaviors. Department Exhibit A, pgs 122-137. April 16, 2008, drug screen revealed a positive test for benzodiazepines, opiates, and cannabinoids. Department Exhibit A, pg 227. This test was taken upon admission to hospital following claimant's presentation at ER stating suicidal ideation and plan. Claimant's AXIS I diagnosis for this hospitalization was mood disorder not otherwise specified; history of diagnoses of major depressive disorder, recurrent, severe, with severe ruminations in

the past; history of adjustment disorder with depression and anxiety. Rule out same; marijuana abuse; rule out opiate and/or benzodiazepine misuse issues; nicotine dependence; and rule out impulse control disorder. GAF on discharge was 45. Claimant was hospitalized for one day. Department Exhibit A, pgs 257-258.

12. Psychiatric treatment records from 2008 indicate claimant has slightly decreased psychomotor activity. Eye contact is a staring gaze and speech is monotone. He does not appear to respond to internal stimuli. He denies delusional thinking and denies suicidal or homicidal ideation. Mood is described as anxious with frequent panic attacks. Affect is significantly restricted. Cognition is alert. Patient is oriented to time, place, and person with some difficulties recollecting details. Insight is limited, judgment is fair. Department Exhibit A, pgs 278-288.
13. During July 2008, claimant presented to hospital complaining of shortness of breath. Claimant was treated twice at hospital for pneumonia and pleural effusion. He underwent thoracentesis and medication treatment. Claimant's condition improved with treatment. Department Exhibit A, pgs 259-266. November 11, 2008, chest x-rays revealed small amount of focal parenchymal strand like density at the base in the lingular segment of the left lung, consistent with residual scarring; no underlying masses in the left lung; in the left lower lobe, parenchymal changes have also cleared as has left pleural effusion. Claimant Exhibit A, pg 5. December 17, 2008, testing revealed claimant to have a premedication FVC of 4.92 and post medication of 3.66. Premedication FEV 1 was 3.74; post med was 2.50. After all pulmonary function tests, it was revealed claimant has decreased diffusion; decreased lung volume; and decreased FEV 1. Final impression was restrictive and obstructive lung disease. Moderate diffusion defect. Claimant Exhibit A, pgs 6-8.
14. April 8, 2009, claimant's physician completed a Medical Examination Report (DHS-49) following physical exam that took place on April 1, 2009. Doctor indicates current diagnoses of history of major depression, knee arthritis and pain, diabetes, COPD, hypertension, elevated cholesterol, history of pneumonia, and deconditioning. Physical exam is within normal limits with the exception of claimant had tired appearance and mildly flat affect. Doctor indicates that she did not assess or examine musculoskeletal and neurological systems. Doctor opined claimant is occasionally able to lift 20 pounds, stand and/or walk less than two hours in an eight-hour workday, sit about six hours in an eight-hour workday, perform a full range of repetitive actions with

both upper extremities, and perform repetitive actions with both lower extremities. Doctor indicates that limitations are due to deconditioning from prolonged hospitalization plus pneumonia plus recent knee surgery. She opines he has limitations in sustained concentration due to a history of major depression. Claimant Exhibit A, pgs 2-4.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the 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 (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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, during July 2008, claimant suffered a bout of pneumonia and complications of pneumonia. In November 2008, pulmonary function tests revealed claimant to have impaired lung function. Impairment did not rise to the level that would be considered to be disabling. The objective medical evidence of record also establishes that claimant has history of mental illness and suicide attempts. He was hospitalized twice in 2008. Treatment records indicate that claimant suffers from panic attacks. He has also been diagnosed with major depression, rule out bipolar disorder. He also is suspected of polysubstance abuse and tested positive for opiates, cannabinoids, and benzodiazepines during April 2008. Claimant's physician indicates that he has knee arthritis and pain and a recent knee surgery. Claimant appears to be fatigued. Finding of Fact 10-14.

Public Law 104-121 provides that no finding of disability shall be made for a drug and/or alcohol abuse is a material causative factor in claimant's asserted disability. AXIS I diagnoses for client include polysubstance abuse, rule out, and claimant tested positive for opiates, cannabinoids, and benzodiazepines. Arguendo, the objective medical evidence of record is not sufficient to establish disability due to mental illness. In any case, no finding of disability would be made due to AXIS I diagnoses that includes rule out polysubstance abuse. Finding of Fact 11.

At Step 2, the objective medical evidence of record is not sufficient to establish that claimant has severe 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 condition does not meet or equal any Social Security Listing.

At Step 4, claimant's past relevant employment has been in construction. See discussion at Step 2 above. Finding of Fact 9-14.

At Step 4, the objective medical evidence of record appears to be sufficient to establish that claimant cannot perform heavy work duties that would be required by his past relevant employment in construction. Accordingly, 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, see discussion at Step 2 above. Finding of Fact 10-14. Public Law 104-121 is cited as at Step 2 above.

At Step 5, the objective medical evidence of record is sufficient to establish that claimant is capable of performing at least unskilled sedentary work duties.

Considering claimant's vocational profile (younger individual, limited education, and history of unskilled work) and relying on Vocational Rule 201.24, 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. The department properly denied his application.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2001 PA 82. The Family Independence Agency (FIA or agency) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Agency 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 the reasons discussed at Steps 2 through 5 above, the Administrative Law Judge finds that claimant does not have severe impairments that have lasted or are expected to last 90 days or more and prevent all employment for 90 days or more. Accordingly, claimant does not meet the disability requirements to qualify for State Disability Assistance.

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: November 29, 2010

Date Mailed: November 30, 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.

JAB/ db

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