

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: 2009-16719
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 23, 2009
Kent County DHS
June 23, 2009

ADMINISTRATIVE LAW JUDGE: Ivona Rairigh

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 23, 2009. Claimant personally appeared and testified. Also appearing on claimant's behalf was his [REDACTED] but offered no additional testimony.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and retroactive 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) On September 8, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On January 16, 2009, the Medical Review Team denied claimant's MA application stating that claimant's impairment lacks duration of 12 months per 20 CFR 416.909. MRT approved claimant's SDA and requested a June 2009 review.

(3) On January 22, 2009, the department caseworker sent claimant notice that his MA application was denied.

(4) On February 5, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On April 6, 2009, the State Hearing Review Team also denied claimant's MA application stating that his impairment lacks duration per 20 CFR 416.909.

(6) Claimant was to provide additional medical information following the hearing. Record was left open originally until September 23, 2009, and then extended further while the Administrative Law Judge contacted the department to find out if additional information has been provided.

(7) On February 2, 2010 department advised that no additional medical records have been received from the claimant. Department also advised that claimant's SDA is closed as he had excess income from receiving wage loss income through his insurance company that he failed to report.

(8) Claimant is a 47 year old man whose birthday is August 8, 1961. Claimant is 5'10" tall and weighs 250 lbs. after gaining 15-20 lbs. due to not being able to move around much. Claimant completed 12th grade and can read, write and do basic math.

(9) Claimant stated that he last worked from November, 2007 to June, 2008 through [REDACTED] in factory piece work, job that ended due to lack of work. Claimant also worked delivering pizzas from September, 2007 to April 2008, as a [REDACTED] from

February, 2007 to August, 2007 until he moved to Michigan to be with his family. Claimant worked at [REDACTED] airport for a rental car agency doing computer and paperwork for 1 month in 2007, job he was fired from. Claimant was also in flooring sales for 9 months in 2006 in [REDACTED], and then moved to [REDACTED]. Claimant was a dj at clubs for 13 years.

(10) Claimant resides in the basement of his parents house, has a driver's license and drives short distances, helps out at bingo once per week, and goes to [REDACTED] meetings daily but has been sober for 8 years.

(11) Claimant alleges as disabling impairments: bi-polar disorder, high blood pressure, severe sleep apnea for which he is on oxygen machine, and fused vertebraes from an accident in 2008 where he was on a bicycle and collided with a vehicle.

(12) Claimant has applied for SSI in November, 2008 and been denied.

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 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 does 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).

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).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

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 testified that he has not worked since June, 2008. Claimant is not disqualified from receiving disability at Step 1.

At Step 2, claimant has the burden of proof of establishing that he has a severely restrictive physical or mental impairment or a combination of impairments that is "severe". An

impairment or combination of impairments is “severe” within the meaning of the regulations if it significantly limits an individual’s ability to perform basic work activities. An impairment or combination of impairments is “not severe” when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual’s ability to work (20 CFR 404.1521 and 416.921; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p).

The objective medical evidence on the record includes an [REDACTED] assessment. Claimant was referred by his mother due to depression and suicide ideation. Claimant reported struggling with these issues and stated that he is taking the first step and admitting he has a problem, but does not know what to do about it. Claimant rated his current suicide risk at 7 on a 0-to-10 scale and stated he keeps a rope next to his bed, but reported no specific plans to harm himself. Claimant was referred to the [REDACTED] program due to the severity of presenting symptoms, specifically depression and suicide ideation. Claimant also agreed to participate in ongoing outpatient services, and to contact the [REDACTED] (claimant had been in the air force for over 3 years in his early 20’s) to determine his eligibility for services.

[REDACTED] report by a psychiatrist of April 29, 2008 states that the claimant was been put on Paxil and will be seen back in three weeks. May 20, 2008 report quotes the claimant as saying he is doing okay with the Paxil, he has a little bit of anxiety, and his blood pressure is not good and is over 200, but he does not have a doctor.

Claimant attempted to kill himself by hanging in August, 2008, but was cut down by his brother and brought to the hospital where he spent several days recovering. Claimant was admitted to psychiatric care on an involuntary status with a court petition. Claimant was diagnosed with bipolar disorder. His condition at discharge was improved, he was alert and

oriented to all spheres, casually dressed with good grooming and hygiene, and his mood and affect were improved. Claimant denied suicidal and homicidal thoughts, auditory or visual hallucinations, and felt ready and safe for discharge. Claimant's prognosis was fair. Claimant's discharge GAF was 57 compared to admission GAF of 10. Claimant was to follow up with his therapist at [REDACTED], and given psychotropic medications.

September 22, 2008 Initial Psychiatric Evaluation states that the claimant described his living situation which has been very stressful for him, he has no job, he mourned the death of his grandmother, and his blood pressure has been raging and very high. Claimant was alert and oriented times three, and pleasant and verbal. Claimant stated he had no memory of his suicide attempt. Claimant denied any suicidal or homicidal ideation or plan at that time, had no active voices or visions, and is working with his therapist whom he really likes. Claimant was to continue with his medications given to him at [REDACTED].

October 6, 2008 medication review describes the claimant as alert and oriented times three, with pleasant affect and stable mood. Claimant continues to take his medication. Claimant did report riding his bike and being struck by a car causing him bad injury to his left rotator cuff. Claimant was fairly stable psychiatrically and in no acute distress. His current medicine was continued.

November 3, 2008 medication review describes the claimant as alert and oriented times three, with pleasant affect, clean-shaven, doing well, and working closely with his therapist. Claimant had no active suicidal or homicidal ideation and was driving around town trying to get all of his errands done. Medications were continued.

At November 17, 2008 medication review claimant was described as doing "great" other than having extreme swelling in his legs and retaining fluid. He had been placed on Lasix and it

was thought that Risperdal given to the claimant at [REDACTED] may be causing his legs to swell. Risperdal was discontinued.

At December 1, 2008 medication review claimant stated that Lasix had reduced the swelling in his ankles. Claimant was taking Depakote, Vistaril and Trazadone. While he is doing well he quit smoking and stopped his pain pills, but he is lacking energy and motivation so his mother wanted some other medicine for this. A low dose trial of Wellbutrin was suggested daily to decrease the flatness claimant's mother complained about. Claimant had no suicidal or homicidal ideation, no active voices or visions, he was pleasant, friendly, talkative, and minimally insightful.

As stated, the claimant provided no additional medical evidence past December 1, 2008 to establish the state of his mental health, which appears to be his main disabling condition. Claimant has not provided any medical evidence of his other conditions, namely sleep apnea and whether this condition continues (or whether it was caused by his suicide attempt and injury to his neck suffered at that time), and what issues he may have from his bicycle-car accident.

Medical evidence has established that claimant had an impairment (or combination of impairments) that has more than a minimal effect on claimant's work activities, namely his mental state that caused the serious suicide attempt in August, 2008. See Social Security Rulings 85-28, 88-13, and 82-63. However, claimant has not established that this condition has continued for 12 months or more, because he has failed to provide any further information past December, 2008 regarding his condition, despite being given 7 months to do so. Latest information provided by the claimant in December, 2008 indicates that his mental state has greatly improved since August, 2008, and that he is on medications that control his depression.

Claimant would therefore have to be denied at Step 2 due to lack of impairment duration based on insufficient evidence to the contrary.

If claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the trier of fact must determine if the claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the claimant's medical record will not support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

At Step 4, if claimant had not already been denied at Step 2, the Administrative Law Judge would have to deny him again based upon his ability to perform past relevant work. Claimant's past relevant work was in a factory piece work, delivering pizzas, as a car salesman, in flooring sales, at a rental car agency, and as a dj. Claimant has not provided any current information to indicate that either his mental or physical condition would prevent him from performing these type of jobs. Finding that the claimant is unable to perform work which he has engaged in in the past cannot therefore be reached and the claimant is denied from receiving disability at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform other jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

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).

Claimant has submitted insufficient objective medical evidence that he lacks the residual functional capacity to perform tasks from his prior employment, or that he is physically unable to do at least medium work if demanded of him. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity to perform other work. Claimant is disqualified from receiving disability at Step 5 based upon the fact that he has not established by objective medical evidence that he cannot perform light, sedentary and medium work, or possibly even heavy work. Under the Medical-Vocational guidelines, a younger individual age 45-49 (claimant is 48), with limited education and an unskilled work history who can perform even only sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.18. Claimant has a high school diploma and should be able to perform more than sedentary work.

The claimant has not presented the required competent, material, and substantial evidence which would support a finding that the claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). Although the claimant has cited medical problems, the clinical documentation submitted by the claimant is not sufficient to establish a finding that the claimant is disabled, as the duration requirement of 12 months is not met. 20 CFR 416.909. There is no objective medical evidence to substantiate the claimant's claim that the alleged impairment(s) are severe enough to reach the criteria and definition of disabled. The claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance and retroactive Medical Assistance benefits. The claimant should be able to perform a wide range of light, sedentary and medium work even with his alleged impairments, as he failed to provide evidence that his impairments meet the duration requirement. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED, and it is SO ORDERED.

/s/ _____
Ivona Rairigh
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 7, 2010

Date Mailed: April 8, 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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cc:

