

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: 2009-31790
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 10, 2009
Kent County DHS

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 September 10, 2009. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and retro 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 January 20, 2009 claimant filed an application for Medical Assistance benefits alleging disability.

(2) On April 23, 2009, the Medical Review Team denied claimant's application stating that he was capable of past relevant work.

(3) On April 28, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On May 15, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On August 19, 2009, the State Hearing Review Team again denied claimant's application stating he retains the capacity to perform a wide range of simple, unskilled, medium work, per Vocational Rule 203.25 as a guide.

(6) Claimant testified at the hearing that he had additional medical information to submit, and record was initially left open for 90 days. However, as of April 28, 2010 no additional medical records have been provided, and record was closed on this date.

(7) Claimant is a 39 year old man who is 5'8" tall and weighs 160 lbs. Claimant attended 8th grade and can read and write, but do little basic math.

(8) Claimant states that he last worked in 2007 in construction performing light industrial duties, and claims his longest job was for couple of weeks. Claimant did this type of work for years, and now has been living with the help of family and friends and on food stamps.

(9) Claimant does not have a driver's license due to four previous DUI's, last one being in 2001 for which he served a one year prison sentence in 2003. Claimant does not have a permanent place to stay and goes from place to place.

(10) Claimant alleges as disabling impairments: depression, anxiety and back pain.

(11) Claimant has applied for SSI and been denied, and is appealing the denial.

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 year 2007. 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 a Psychiatric/Psychological Examination Report of October 8, 2008 which states that the claimant has limited reading abilities, does not concentrate well, has trouble with social interactions, is extremely talkative, and is easily distracted. Claimant came alone for the interview and was clean, punctual, and had no difficulty finding the office. Claimant stated he feels anxious, sleeps less than normal, has difficulty maintaining attention, has racing thoughts, and is easily distracted. Claimant had no previous psychological treatment. Claimant reported doing all of his daily living skills okay, but that he has trouble with social relationships.

[REDACTED] quotes as claimant's chief complaints bipolar disorder, anxiety and back pain. Claimant was currently on Seroquel and undergoing psychiatric care twice per week. Claimant had also had a history of recent onset of back pain and stated that he was assaulted and did undergo an emergency room evaluation. X-rays were done and were normal, and claimant was told that he "would be sore for a few weeks." Claimant was not taking anything for pain, did not do any therapy, and was not using an assistive device. Claimant had not worked since 2007 and was living with his family in a home. Claimant could do his own household chores. Claimant stated he mostly keeps to himself because of his anxiety and bipolar, but does play with his children ages 14 and 3 years. Claimant stated he had no problem sitting, standing, or walking, except for his back pain, and that he could lift about 15 lbs.

Claimant appeared mildly depressed. Claimant's immediate, recent and remote memory is intact with normal concentration, his insight and judgment are both appropriate, and he provided good effort during the examination. Claimant's blood pressure was 110/70 and pulse 84 and regular. All of claimant's examination areas were normal, including musculoskeletal and

neurological. Claimant walked with a normal gait. Examiner could not find any significant orthopedic or neurological disease, and while the claimant was assaulted a few weeks ago his range of motion was well preserved.

Claimant was referred by his DHS worker to [REDACTED] for an assessment of disability on [REDACTED]. Claimant had been seeing a psychiatrist and also has group therapy. Claimant denied any history of psychiatric hospitalization, but did report a history of some panic episodes and that he does not like to be in large groups of people. Claimant also denied any history of suicidal ideation and has never attempted suicide. Claimant has a history of alcohol abuse and went to prison when he was in his 20's due to 3rd drunk-driving charge. Claimant was using alcohol occasionally at the time of this assessment. Claimant's hygiene was good, and his gait, speech, and level of psychomotor movement were within normal limits. Claimant's mood was somewhat anxious and depressed, but his thought was coherent, there were no loose associations, and language was within normal limits. Claimant's diagnosis was that of bipolar disorder, anxiety disorder, and alcohol abuse. Claimant's GAF was at 55, and his prognosis fair as he has a reasonable chance of maintaining stability with ongoing treatment.

There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment. Claimant described having back pain at the hearing, however his medical record shows that he was assaulted and x-rays showed no permanent injury.

There is no evidence in the record indicating that claimant suffers mental limitation. The evidentiary record is insufficient to find claimant suffers a severely restrictive mental impairment. Claimant appears to have reported for psychiatric treatment when applying for disability; however he has not provided any records of continued mental health treatment after February, 2009. Mental health treatment reports provided by the claimant are based on his subjective report of anxiety, racing mind, lack of focus, isolation, and inability to be around lot of people. Therefore, conclusions that the claimant has a bipolar disorder and anxiety disorder based on couple of visits with mental health professionals and prompted by claimant's disability applications are not persuasive and do not provide a basis for conclusion that the claimant has a serious mental disorder. For these reasons, this Administrative Law Judge finds that claimant has failed to meet his burden of proof at Step 2. Claimant must be denied benefits at this step based upon his failure to meet the evidentiary burden.

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 light industrial construction and in simple labor 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 [REDACTED], [REDACTED]

[REDACTED]... 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 18-44 (claimant is age 39), with limited education and an unskilled or even no work history who can perform medium work is not considered disabled pursuant to Medical-Vocational Rule 203.25.

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. 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 retro 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. 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: May 6, 2010

Date Mailed: May 6, 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.

IR/tg

cc:

