

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: 2009-37217

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

November 12, 2009

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

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 November 12, 2009. Claimant personally appeared and testified. Claimant was represented at the hearing by his mother.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) 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) On April 2, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On June 16, 2009, the Medical Review Team denied claimant's application stating that claimant's impairments were non-exertional.

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

(4) On August 12, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On October 5, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: Current intelligence scores are considered valid as there is no evidence to support the significant drop recorded scores. The claimant does continue on medication at this time. There are medical source statements for claimant being capable of moderate to high level of cognitive complexity in the workplace. The Medical Review Team determination was for a denial to other work. There is sufficient evidence in the file to document that claimant retains the ability to perform a wide variety of simple and repetitive tasks, despite lengthy treatment of ADHD and bipolar. Medical Vocational Rule 204.00, Listings 12.02, 12.04, 12.08, and 12.09 were reviewed.

(6) The hearing was held on November 12, 2009. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(7) Additional medical information was submitted and sent to the State Hearing Review Team on November 13, 2009.

(8) On November 16, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The claimant continues to retain the ability to perform simple and repetitive tasks. There are no physical limitations relative to this application. The claimant is a 22-year-old individual with a high school education and a history of no gainful employment. Using Vocational Rule 204.00 as a guide, the claimant retains the ability to be gainfully employed in a wide range of occupations. MA-P, retroactive MA-P and State Disability Assistance are denied by this decision. Listings 12.02, 12.04, 12.08, and 12.09 were considered in this determination.

(9) Claimant is a 22-year-old man whose birth date is [REDACTED]. Claimant is 5' 6" tall and weighs 140 pounds. Claimant is a high school graduate and is able to read and write. Claimant stated that he read and write at the 3rd grade level and that he has basic math skills and can add and subtract, but not divide or do multiplication. Claimant testified that he can count money.

(10) Claimant has worked as a seasonal landscaper.

(11) Claimant alleges as disabling impairments: attention deficit hyperactivity disorder and bipolar disorder.

CONCLUSIONS OF LAW

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).

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).

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 has only worked for one summer for a few months as a seasonal landscaper. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a [REDACTED] [REDACTED] psychological testing of [REDACTED] indicates that claimant appeared his stated age. He spelled his first and last names correctly. He knew his date of birth, the date of the exam, and stated his age correctly. He is a right-handed individual. His IQ scores were all in the average range. Academic achievement scores at the time were significantly lower with achievement standard scores of reading of 78, math 65, spelling 72, in the borderline to mildly retarded ranges. He was classified with a specific learning disability through the school system in light of superiority of IQ scores to academic achievement scores. He has been incarcerated twice in December 2008 for possession of a dangerous weapon and previously in June 2008 for domestic violence toward his girlfriend and his mother. (pp. 5-6)

On his Activities of Daily Living sheet which claimant completed, he stated that he usually takes a 1-2 hour nap during the day, that he doesn't need any special help taking care of his personal needs. He can fix cereal, sandwiches, frozen food, hotdogs, and pick his own breakfast, lunch, and dinner. He can do lawn care, vacuuming, washing dishes, and shoveling snow and he does them daily-to-weekly and he usually spends 20-30 minutes on each task. He does shop for food, clothing, CDs, and gifts. He walks or drives or takes the bus to neighbor shops or the mall. He watches television or listens to the radio and usually sports and news. He usually reads the newspaper or books about history. He visits friends daily and on the holidays. He lives with his grandparents, uncles, aunts, his mom, and with friends. He sometimes goes to church about once a month and listens and prays.

Claimant testified that he does have a driver's license and he does drive time one time per month to the grocery store. Claimant testified that he grocery shops once in awhile with no help and he does clean his home by vacuuming, dusting, and mopping. Claimant testified that he does rake the leaves, cut the grass, and trim the bushes. Claimant testified that he has no limits on his ability to stand, sit, or walk. Claimant testified that he can squat, bend at the waist, shower and dress himself, tie his shoes, and touch his toes. His knees and back are fine. He has no pain and he is right-handed. On his right hand and arm he has eczema and that his legs and feet are fine. Claimant testified that the heaviest weight he can carry is 165 pounds. In a typical day he gets up, takes a shower, hangs out with friends, he cooks, and watches television, and shoots pool. Claimant testified he is looking for a job and it's hard to find a job.

Claimant's mother testified that she needs help with her son because he was recently diagnosed with a bipolar disorder because he just met his father. He used to take Adderall and Ritalin and he should be on medications because he loses control. He looks for work but no one with hire him because he doesn't interview well. She stated that meds make him feel better.

At Step 2, claimant has the burden of proof of establishing that he has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant has not made any allegations that he has a physical impairment.

There is insufficient objective medical/psychiatric evidence in the file which establishes that claimant has a severely restrictive mental impairment. The claimant alleges disability secondary to bipolar disorder and attention deficit hyperactivity disorder. The new medical provided by the claimant does not materially impact the previous decisions made the Medical Review Team or the State Hearing Review Team. Claimant did testify that he does have depression and a bipolar disorder as well as ADHD and sometimes has problems comprehending.

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).

There is insufficient objective medical/psychiatric evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. Claimant's description of his activities of daily living indicate that he does not have any severe restrictions on his activities of daily living. Claimant also testified that he does look for jobs. Therefore, this Administrative Law Judge finds that the evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. Claimant was able to answer the questions at the hearing and was responsive to the questions at the hearing. Claimant was oriented to time, person, and place during the hearing. 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 medical evidence of claimant's condition does not give rise to a finding that he would meet a statutory listing in the code of federal regulations.

If claimant had not already been denied at Step 2, this Administrative Law Judge would have to deny him again at Step 4 based upon his ability to perform his past relevant work. Claimant's past relevant work was doing lawn care and landscaping. Claimant has no physical restrictions and there is medical evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work which he has engaged in, in the past.

Therefore, if claimant had not already been denied at Step 2, he would again be denied 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 some other less strenuous tasks than in his prior 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 some other less strenuous tasks than in his prior employment or that he is physically unable to do sedentary, light, medium, or heavy work if demanded of him. Claimant's activities of daily living do not appear to be very limited and he should be able to perform a wide range of occupations even with his impairments. Claimant has failed to provide the necessary objective medical evidence to establish that he has a severe impairment or combination of impairments which prevent him from performing any level of work for a period of 12 months. Under the Medical-Vocational guidelines, a younger individual (age 22), with a high school education and an unskilled work history who can perform a wide range of occupations is not considered disabled.

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. PEM, Item 261, p. 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

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, retroactive Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of occupations even with his impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.

/s/ _____
Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: February 26, 2010

Date Mailed: March 1, 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.

LYL/vmc

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