

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: 2009-37237
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 28, 2009
Ottawa 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, a telephone hearing was held on October 28, 2009. 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) 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) February 13, 2009, claimant applied for MA, retroactive MA, and SDA.
- (2) On or about June 17, 2009, and August 18, 2009, the Medical Review Team (MRT) denied claimant's application. Department Exhibit A.

(3) August 1, 2009, the department sent claimant written notice that his application was denied. Department Exhibit C.

(4) August 12, 2009, the department received claimant's timely request for hearing.

(5) October 5, 2009, the State Hearing Review Team (SHRT) denied claimant's application. Department Exhibit B.

(6) October 28, 2009, the telephone hearing was held.

(7) Claimant asserts disability based on impairments caused by a closed head injury and depression.

(8) Claimant testified at hearing. Claimant is 32 years old, 6'3" tall, and weighs 195 pounds. Claimant completed ninth 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 as a fast food crew member, pizza cook, doing concrete work, doing lawn care, and managing inflatable entertainment toys.

(10) On or about May 1996, claimant suffered a severe traumatic brain injury secondary to a fall. At 15 days post-injury, claimant presented with cognitive, motor, and functional deficits. He exhibited no consistent visual focus or tracking; inability to follow directions; and was oriented only to person. Department Exhibit A, pgs 4-8. During June 1996, claimant underwent a psychiatric consultation and a report was prepared. AXIS I diagnoses were personality change due to traumatic brain injury, superimposed on attention deficit/hyperactivity disorder, combined type. The report indicates claimant has deteriorated grooming and intrusive, impulses social graces. Mood was angry with high energy and affect was superficial. Speech was rapid and reveals a preoccupation with the injustice of not returning home. Claimant appears unable to process new information. Memory is distorted and short-term memory is deficient.

Claimant holds his beliefs to almost psychotic proportions. Insight is absent. Judgment is impaired. Department Exhibit A, pg 9. Upon discharge on or about July 3, 1996, claimant was placed in the guardianship of a relative and was determined to require assistance and supervision in the community for awareness problems. Department Exhibit A, pgs 13-15.

(11) November 25, 2008, claimant underwent a psychosocial assessment and update. A narrative report was prepared that indicates the following: claimant's attitude was cooperative, immature, and polite; behavior was restless but cooperative; speech productivity was spontaneous; speech progression was logical; language was clear; emotional quality was composed, depressed, and anxious; emotional range was blunted; conscious thought process was alert; orientation was normal; memory was defective with short-term memory deficits. Intellectual functioning is below average. Insight is questionable. Judgment is impulsive. Claimant was noted to have suicidal and homicidal ideation with plans to carry out. The report indicates that claimant was currently able to control abusive behavior, but not impulsivity. Appearance and hygiene falls below standards at times due to anhedonia and poor memory. The report indicates that claimant's short-term memory impedes self-direction. Claimant is not able to process and perform daily tasks. He is not able to plan ahead or distinguish what he has or needs to do. AXIS I diagnoses were bipolar disorder; cognitive disorder; and alcohol abuse. GAF was assessed at 61. Department Exhibit A, pgs 83-91.

(12) June 1, 2009, claimant underwent a psychiatric evaluation and a narrative report was prepared. The report indicates AXIS I diagnoses of bipolar disorder; cognitive disorder; history of alcohol abuse; and history of ADHD in childhood. The report indicates that claimant is alert and oriented x 3. Affect is stable and appropriate but mood is mildly anxious. Speech is relevant and coherent but slightly slow. He shows no tangibility, flights of ideas or looseness of

association. He admits to past suicide ideation but denies current suicide ideation. He denies auditory or visual hallucinations. He shows good insight into his history. He admits to memory difficulties and often loses track of conversations. He has seizures from time to time and does not remember having them. Vocabulary and fund of knowledge seem to be within the average range though history suggests a significantly above-average IQ prior to traumatic brain injury.

Claimant shows no psychomotor agitation or retardation. Station and gait are unremarkable.

June 2, 2009, claimant's psychiatrist completed a Mental Residual Functional Capacity Assessment (DHS-49-E) following psychiatric exam on June 1, 2009. Doctor indicates claimant has history of severe closed head injury at age 18 with resultant emotional instability, high distractibility, and some memory deficits. Doctor opines that claimant is marketedly limited in the following areas: ability to understand and remember detailed instructions, ability to carry out detailed instructions, ability to maintain attention and concentration for extended periods of time, ability to perform activities within a schedule, maintain regular attendance, and be punctual with customary tolerances, ability to get along with co-workers or peers without distracting them or exhibiting behavioral extremes, and ability to set realistic goals or make plans independently of others. Department Exhibit A, pgs 116-120.

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).

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, the objective medical evidence indicates that claimant suffered a traumatic head injury during 1996. In 2008 and 2009, claimant was found to have bipolar disorder, depression, and alcohol abuse. Claimant had impaired memory, inability to control impulses, and inability to form a plan to carry out activities of daily living. Finding of Fact 10-12.

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.

At Step 3, claimant's impairments appear to meet or equal Social Security Administration Listing 12.02A2-B2-3.

At Step 4, claimant's past relevant employment has been as a fast food crew member, pizza cook, concrete worker, lawn care worker, and other odd jobs. Finding of Fact 9. See discussion at Steps 2-3 above. Finding of Fact 10-12.

At Step 4, the objective medical evidence of record is sufficient to establish that claimant has cognitive impairments that prevent claimant for a period of 12 months or more, from engaging in a full range of duties required by claimant's past relevant employment. Therefore, 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, the objective medical evidence of record establishes that claimant has a non-exertional impairment: cognitive impairment. Finding of Fact 10-12. See discussions at Steps 1-4 above.

At Step 5, the objective medical evidence of record is sufficient to establish that claimant does not retain the residual functional capacity to perform work activities. Accordingly, claimant is not disqualified from receiving disability at Step 5.

Claimant meets the federal statutory requirements to qualify for disability. Therefore, claimant meets the disability requirements for Medical Assistance based on disability.

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).

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 reasons discussed at Steps 1-5 above, the Administrative Law Judge decides that claimant has severe impairments that prevent work for 90 days or more. Therefore, claimant meets the disability requirements to qualify for SDA based on disability.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant has established disability for Medical Assistance and State Disability Assistance.

Accordingly, the department's action is, hereby, REVERSED. The department is to initiate a determination of claimant's financial eligibility for Medical Assistance beginning with the earliest appropriate retroactive month prior to the month of application. The department is to initiate an evaluation of claimant's financial eligibility for SDA beginning the month of

application. If otherwise eligible, medical review is set for December 2011. Claimant shall provide updated psychiatric records at review. Failure to do so may affect future eligibility.

/s/

Jana A. Bachman
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: December 10, 2009

Date Mailed: December 11, 2009

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:

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