

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: 2009-6787

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

January 29, 2009

Ingham 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, an in-person hearing was held on January 29, 2009. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED]

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) In December 10, 2007, claimant filed an application for Medical Assistance, State Disability Assistance benefits retroactive Medical Assistance benefits for the months of September, October and November 2007, alleging disability.

(2) On August 8, 2008, the Medical Review Team denied claimant's application stating that claimant impairments were non-exertional.

(3) On August 18, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On November 13, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On January 2, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of unskilled work per 20 CFR 416.968(a) pursuant to Medical Vocational Rule 204.00.

(6) Claimant is a 43-year-old man whose birth date is [REDACTED]. Claimant is 5' 5" tall and weighs 170 pounds. Claimant attended the 9th grade but has no GED. Claimant was in special education for reading and is able to add, subtract, multiply and count money.

(7) Claimant last worked in 2000 for [REDACTED]. Claimant has also worked for [REDACTED] laying fabric and for [REDACTED]. Claimant was in prison from [REDACTED].

(8) Claimant alleges as disabling impairments: mental retardation, learning disabled, depression, hepatitis C and back pain as well as hip pain and heart problems and missing teeth in his upper and lower front of his mouth.

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 not worked since 2000. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant had an episode of chest pain in October 2007 and he was diagnosed with hypertension. Claimant is a very poor historian but noted that he jumped from a two-story building and sustained a fracture of the right calcaneal spur and has persistent left hip and left back pain which he believes is a result of this fall. Claimant is functionally illiterate and has strong odor of alcohol and admitted that he used cocaine and marijuana and has a history of heroine use. When he was in the penitentiary he was diagnosed with hepatitis B and hepatitis C. Claimant has extremely poor dentition and quite a bit of dental pain. Claimant is basically homeless but does stay with his sister on a regular basis.

Claimant had frequent difficulty answering questions directly and advised that he hears voices on a frequent basis who tell him to hurt people. He stated that he tries not to listen to the voices.

Claimant was a well-developed, well-nourished male in no acute distress but obviously under the influence of alcohol. His vital signs are height in shoes of 67". His weight was 160 pounds. His pulse was 61, blood pressure was 154/101, respiratory rate is 18 and unlabored. His nares and pharynx was unremarkable. Disks not evaluated. He has extremely poor dentition and gum disease. His neck was supple without adenopathy, thyromegaly or bruits. His skin was remarkable from multiple old scarring, track marks in the antecubital fossa. He has multiple abrasions and contusions healing on his extremities. His chest was clear. He has some diminished breath sounds throughout. No rales, wheezes or rhonchi. Heart was a regular rate and rhythm, his abdomen was soft and non-tender, benign. There were no masses or organomegaly. His back was negative for CVA tenderness. His distal extremities have good pulses. No pedal edema.

The claimant had a low but normal range of motion in the neck and back and shoulders, elbows, wrists, hands, hips, knees, ankles and feet (Medical Reports, pages 3-5).

The psychological evaluation at the hearing indicates that claimant had a verbal IQ, performance of 59 and a full scale IQ of 55. Claimant functions in the extremely low range of intelligence and his verbal IQ and performance IQ fell within this range. His subtest scores were also in the range of 25 indicating consistent cognitive functioning across both language based and non-language based areas. Claimant had significantly reduced academic skills in reading, writing, and arithmetic. Claimant was functionally illiterate and could not function in vocational settings in which academic skills were utilized. Claimant reported that he hears voices that tell him to hurt people. He said the only way that he can get rid of them is to read the Bible. He

reported that he had been hearing these voices for a number of years both when sober and intoxicated. He is unable to indicate if he hears these voices only when he is feeling depressed or if he hears them at other times as well. He said, "I am fighting them everyday like demons and I'm trying to avoid them." He indicated that he was hearing voices on the day of the evaluation which was [REDACTED]. In terms of sensorium and mental capacity, claimant was oriented to time, place and person. He could recall four digits forward and three digits backward. He could recall two out of three objects after a 3 minute time lapse. Claimant knew his birthday and could correctly name four recent past presidents. Claimant exhibited extremely low capabilities for general fund of information. He could correctly name one large city, name three currently famous poets and no current events. Claimant could not complete serial sevens. He was unable to complete any of the numbers in sequence. Claimant indicated that a bush and a tree were alike in that they were both still growing. He indicated that they were different because one has got leaves and one has got limbs. Claimant's diagnostic impressions were depressive disorder NOS 311, alcohol dependence 303.90, cannabis dependence 304.30, cocaine dependence, possibly in remission, 304.20, opiate dependence, possibly in remission, 304.00, rule out psychotic disorder NOS 298.9. Claimant's GAF as of July 18, 2008 was 45 (pages 7-12).

On [REDACTED], claimant was taken to [REDACTED] for chest pain. Claimant was given aspirin and nitro sublingual constantly with no relief. In the emergency department he was given nitro paste and morphine and was given some relief. He has had the same pain the past, once a couple months ago and once a couple years ago. He says the pain comes on after he quits drinking. Claimant drinks seven to eight 24-ounce beers per day. His last drink was 3 days prior to admission on Tuesday. The claimant is having no visual hallucinations; however, he does state that he hears voices and a male voice that tells him that there are other

people. Claimant is positive hepatitis C and hypertension but has no diabetes or hypercholesterolemia. According to claimant he gets the shakes in the morning when he does not drink and that alcohol relieves it (page 15 of the Medical Reports).

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 a duration of at least 12 months. In the instant case, claimant does have significantly sub-average general intellectual functioning with deficits in adaptive functioning initially manifested during the developmental period, i.e., the evidence demonstrates or supports onset of the impairments per age 22. Claimant has a valid verbal total performance or full scale IQ of 59 or less which means that he does meet Listing 12.05 for mental retardation. Therefore, claimant has established that he does have a severe impairment or combination of impairments which have lasted or will last the durational requirement of 12 months or more.

At Step 3, claimant's impairments do meet Listing 12.05 for mental retardation.

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, page 1. Because the claimant does meet the definition of disabled under the MA-P program and because the evidence of record does establish that claimant is unable to work for a period exceeding 90 days, the claimant does meet the disability criteria for State Disability Assistance benefits also.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has not 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 does meet Listing 12.05b because he has a valid verbal total performance or full scale IQ of 59 or less.

Accordingly, the department's decision is REVERSED. The department is ORDERED to reinstate claimant's December 10, 2007 Medical Assistance and State Disability Assistance benefit application and if claimant is otherwise eligible, open an ongoing Medical Assistance and State Disability Assistance benefits case for claimant starting December 10, 2007. The department should also reinstate claimant's September, October and November 2007 retroactive Medical Assistance application to determine whether or not claimant is otherwise eligible and if claimant is otherwise eligible shall open an ongoing Medical Assistance case from September 2007.

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

Date Signed: February 10, 2009

Date Mailed: February 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.

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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

cc:

