

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: 2009-6789
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 1, 2009
Luce 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 April 1, 2009. Claimant personally appeared and testified. Also appearing and testifying on claimant's behalf was his mother [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) On August 8, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On October 29, 2008, the Medical Review Team denied claimant's application stating that claimant had a non-severe impairment.

(3) On November 5, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On November 17, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On , the State Hearing Review Team (SHRT) again denied claimant's application stating that the claimant was capable of performing other work, namely unskilled work per 20 CFR 416.968(a).

(6) Claimant submitted additional medical information following the hearing that was forwarded to SHRT for additional review. On July 7, 2009 SHRT once again determined that the claimant was not disabled as he retains the capacity to perform a wide range of light, unskilled work.

(7) Claimant is a 43 year-old man whose birthday is [REDACTED]. Claimant is 6 feet tall and weighs 238 pounds after losing 20 lbs. in the last 3 months due to thyroid hormone replacement therapy. Claimant has a GED and a culinary arts certificate from Michigan Department of Corrections where he was incarcerated from January, 2004 to August, 2008. Claimant can read, write and do basic math.

(8) Claimant states that he last worked in 2001 as a cook for a restaurant for 6-7 months, job he quit due to having bi-polar disorder issues. Claimant has worked as a cook in various restaurants for the past 20 years. Claimant was also in the U.S. Army for 60 days but discharged due to having flat feet.

(8) Claimant is currently living with his parents who help him financially, and also receives food stamps.

(9) Claimant alleges as disabling impairments: seizure disorder, bi-polar disorder, depression, thyroid cancer, hypothyroidism, anxiety, Hepatitis C antibodies, high blood pressure, and degenerative disc disease he states was just diagnosed.

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).

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).

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 2001. 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 October 9, 2008 Office Note stating that the claimant was seen after a fine needle aspiration biopsies of both lobes of his thyroid for suspicious nodules. Biopsy findings dictated that the claimant have a total thyroidectomy as results were highly consistent with papillary thyroid carcinoma. Claimant was scheduled for surgery for [REDACTED]. November, 2008 Surgical Pathology Report indicating claimant had total thyroidectomy due to thyroid carcinoma, but that his lymph nodes are negative for carcinoma.

[REDACTED], CMH Screening and Assessment report upon referral from 11th Circuit Court indicates claimant is on parole after being in prison for over 4 years. Report quotes the claimant as saying he has received mental health services/other counseling over 20 times from 1983 to 2002 due to bipolar episodes exacerbated by drug use, heroine. Claimant stated that he had no physical disabilities but that his major problems now are financial and physical health. Claimant's diagnosis is listed as heroine and alcohol dependence, bipolar disorder, mixed, severe with psychotic per client, and his GAF was 55. Claimant cited 7 lifetime suicide attempts after which he was hospitalized in psychiatric facilities, but his current suicidal risk was low as long as he takes medication.

September, 2008 CMH Monthly Report indicates that the claimant has made moderate progress and seems very motivated toward treatment, but his prognosis is modified by the bipolar disorder, and if he quits taking his medication he will in danger of using drugs again. Claimant is living with his parents in a stable environment, he is helping many neighbors with odd jobs and help one neighbor care for sled dogs.

Michigan Department of Corrections medical records for the claimant indicate he was seen by Health Care for various reasons during the years of his incarceration. Claimant was diagnosed with Hepatitis C. Claimant was also given medication to control his bipolar disorder, and his diagnosis was that of bipolar disorder with episodes with psychotic features, polysubstance dependence, and personality disorder. MDOC Therapy Termination Report indicates that the claimant should be involved in therapy upon his release, participate in any available programs in his area that facilitate job placement, job skills, and reintegration into society. Claimant was also encouraged to utilize community organizations and support groups to help him with substance abuse relapse prevention, including AA and NA, and to obtain a sponsor.

[REDACTED], psychological evaluation to include a mental status exam upon referral from Disability Determination Service indicates that the claimant is applying for disability due to bipolar disorder, seizures, thyroid cancer, chronic pain, and hepatitis. Claimant reported being diagnosed with bipolar disorder in 1985 by a psychiatrist, and described symptoms including difficulty to sleep, difficulty concentrating, and impulsiveness. Claimant also reported periods of manic states for 4 to 6 days at a time, and depressive states for a week to 10 days at a time, and that he will be up for 21 hours straight before finally going to sleep. Claimant stated he has had 7 or 8 suicide attempts, either by overdose or cutting, last attempt being in 2003. Claimant did state that he has not had a seizure in over 10 years. Claimant related he has chronic pain from several herniated discs, and that he has Hepatitis B and C.

Claimant reported his daily activities to be getting up at 5:30 a.m., watching the news and then walking the dogs for 2 hours, being able to bathe and dress himself, helping out at home with meals, and that he reads. Claimant's clothing and hygiene was within normal limits. Claimant appeared to have contact with reality, his responses were spontaneous, flow of mental

activity normal, and speech was of normal rate and rhythm. Claimant denied any hallucinations, there as no evidence of delusional ideation or perceptual disorders, and he denied any thoughts or feelings of self harm. Claimant was diagnosed with bipolar disorder, polysubstance dependence in complete remission, and his GAF was 53. It was noted that the claimant is able to understand, retain, and follow simple instructions, but has difficulties with a depressive mood, lack of motivation, and in people interactions.

Medical Examination Report of [REDACTED], lists as claimant's impairments chronic pain syndrome, degenerative disc disease, depression, anxiety, hypothyroidism, and hypertension. Claimant had difficulty abducting right arm and had decreased range of motion and strength in this arm, but other examination areas were normal. Claimant's condition was listed as deteriorating, but he could lift/carry up to 20 lbs. occasionally, stand/walk less than 2 hours in an 8-hour work day, and did not need any assistive devices for ambulation. Claimant could use only his left arm for repetitive motions and could not operate foot/leg controls. Claimant had mental limitations in the areas of comprehension, memory, sustained concentration and reading/writing. Claimant could meet his needs in the home without assistance.

Medical evidence has clearly established that claimant has an impairment (or combination of impairments) that has more than a minimal effect on claimant's work activities. See Social Security Rulings 85-28, 88-13, and 82-63. For these reasons, this Administrative Law Judge finds that claimant has met his burden of proof at Step 2.

The analysis proceeds 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, the Administrative Law Judge would question claimant's ability to perform his past relevant work. Claimant testified that his past relevant work was being a cook, but that he could not work in MDOC Food Service due to having Hepatitis C. Finding that the claimant is unable to perform work which he has engaged in in the past could therefore be reached and the claimant is not 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 showing that he is physically unable to do at least sedentary and light work if demanded of him. Most recent medical examination report of April, 2009 indicates that the claimant can do such work.

Claimant has a bipolar disorder and suffers from depression, and also has a history of mental health issues. However, it is apparent from claimant's medical record that he has been a long term substance abuser, namely heroine abuser. Claimant testified that he used heroine, cocaine and LSD in the past, and that he quit while in prison (where such drugs are not readily available unless they are smuggled in). Whether claimant had psychological problems that lead to his drug use, or whether such drug use lead to his psychological problems is a question that cannot be answered for sure. Psychological reports indicate that as long as claimant stays on his medications his bipolar disorder should be under control. Claimant's record also cites him as

saying that he does odd jobs for neighbors and helps with sled dogs, and that he walks these dogs 2 hours per day. Claimant testified that he felt he could do child care for children in his family when asked if there was any job he could do. 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 sedentary and light work. Under the Medical-Vocational guidelines, a younger individual age 18-44 (claimant is 43), who is even illiterate or unable to communicate in English (claimant has a GED) and an unskilled work history or no work history at all who can perform only sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.23.

The claimant has 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). However, 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.

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 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 sedentary and light 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: October 1, 2009

Date Mailed: October 5, 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 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 [REDACTED]

cc:

[REDACTED]