

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: 2009-10388
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 16, 2009
Midland County DHS

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

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 hearing was held on April 16, 2009. Claimant appeared and testified.

ISSUES

Did the Department of Human Services properly determine that Claimant is not disabled and deny Claimant's application for Medical Assistance (MA) based on disability?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) Claimant is a 55 year-old male. Claimant is 72 inches tall and weighs approximately 210 pounds. Claimant's formal education consists of 12 years of school.
- (2) Claimant has past relevant work as an unskilled laborer doing tree trimming, construction, and material stocking.

(3) Claimant last worked in September, 2005 as a tree trimmer. Claimant reports he left that employment because he hurt his back.

(4) On August 28, 2008, Claimant applied for Medical Assistance (MA) based on disability.

(5) On October 17, 2008, the Department of Human Services Medical Review Team determined that Claimant was not disabled in accordance with the standards for Medical Assistance (MA).

(6) On October 22, 2008, Claimant was sent notice of the Department's determination.

(7) On December 3, 2008, Claimant submitted a request for hearing.

(8) On February 3, 2009, the Department of Human Services State Hearing Review Team determined that Claimant was not disabled in accordance with the standards for Medical Assistance (MA) or State Disability Assistance (SDA).

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).

Disability determinations done by the State of Michigan for Medical Assistance (MA) based on disability use the Social Security Administration standards found in United States Code of Federal Regulations (CFR) at Title 20, Part 416. The law defines disability 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 at least 12 months. To meet this definition, you must have severe impairments that make you unable to do your past relevant work or any other substantial gainful work that exists in the national economy.

Disability determinations done by the State of Michigan, for State Disability Assistance (SDA), use the same standards with one minor difference. For State Disability Assistance (SDA) the medically determinable physical or mental impairments that prevent substantial gainful activity must result in death or last at least 90 days.

In accordance with the Federal Regulations an initial disability determination is a sequential evaluation process. The evaluation consists of five steps that are followed in a set order.

STEP 1

At this step, a determination is made on whether Claimant's is engaging in substantial gainful activity (20 CFR 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. Substantial work activity is work activity that involves doing significant physical or mental activities. Gainful work activity is work activity that you do for pay or profit (20 CFR 416.972). If you are engaged in SGA, you are not disabled

regardless of how severe your physical or mental impairments are and regardless of your age, education, and work experience.

Claimant spends most of his time at home and does not engage in any activity for pay or profit. Claimant is not engaged in substantial gainful activity. Claimant is not found ineligible at this step.

STEP 2

At the second step, it is determined whether you have a medically determined impairment that is severe or a combination of impairments that is severe (20CFR 416.920(c)). 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 establishes 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 416.921). In addition to the limiting effect of the impairments they must also meet durational requirements, 90 days for State Disability Assistance (SDA) and 12 months for Medical Assistance (MA) based on disability. If your medically determinable impairments are not severe you are not disabled.

Claimant asserts disability based upon a broken clavicle and being diagnosed as bipolar. Relevant evidence in the record from medical sources includes: an emergency room report from [REDACTED], for a broken clavicle; an intake report from [REDACTED] for [REDACTED] dated [REDACTED]; and a psychiatric evaluation from [REDACTED] for [REDACTED] dated [REDACTED].

On [REDACTED], Claimant was examined at the emergency room of [REDACTED] in Midland. X-rays showed that Claimant had a broken right clavicle. Claimant

was given a sling and discharged. There is no other medical evidence regarding Claimant's right shoulder.

On [REDACTED], Claimant was evaluated for treatment at [REDACTED]. Claimant was determined to have moderate anxiety, depression, and mania. Claimant showed no abnormalities of presentation, speech, emotion, or thought process. Claimant was diagnosed with Mood Disorder. It was also documented that he has alcohol dependence and cocaine abuse. Claimant was referred to outpatient psychiatric services.

On [REDACTED], Claimant underwent a psychiatric evaluation by [REDACTED], [REDACTED] of [REDACTED] for [REDACTED]. Claimant was diagnosed as having Bipolar Disorder and a past history of alcohol and cocaine abuse. Based on a combination of the history Claimant reported, and the Doctor's observations, the Doctor continued Claimant on Seroquel and increased the dosage.

CFR 416.921 defines a non-severe impairment. An impairment or combination of impairments is not severe if it does not significantly limit your physical or mental ability to do basic work activities. When we talk about basic work activities, we mean 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.

Claimant has no medically determined impairments that would significantly limit his physical or mental ability to do basic work activities. Claimant is found ineligible at this step. The assessment of Claimant's disability assertion will continue on through all required steps.

STEP 3

At the third step, it is determined whether your impairments meet or equal the criteria of an impairment listed in a Social Security Administration impairment listing 20 CFR Part 404, Subpart P, Appendix 1. If your impairment meets or equals the criteria of a listing and meets the duration requirement, you are disabled.

Claimant's medically determined bipolar disorder compared with the Social Security Administration impairment listing 12.04 Affective Disorders. That listing is:

A. Medically documented persistence, either continuous or intermittent, of Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes);

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Marked difficulties in maintaining concentration, persistence, or pace; or
4. Repeated episodes of decompensation, each of extended duration;

OR

C. Medically documented history of a chronic affective disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration; or
2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

Claimant's bipolar disorder did not meet or equal these listings because he has no marked restrictions or difficulties and no episodes of decompensation.

STEP 4

At the fourth step, we assess your residual functional capacity (RFC) to determine if you are still able to perform work you have done in the past. Your RFC is your ability to do physical and mental work activities on a sustained basis despite limitations from your impairments. Your RFC is assessed using all the relevant evidence in the record. If you can still do your past relevant work you are not disabled under these standards.

Claimant reports past relevant work in unskilled labor as a tree trimmer, in construction, and in material stocking. At this hearing Claimant specifically asserted he cannot work because of lower back and shoulder pain. Claimant testified that he can only sit for 45 to 60 minutes, has to move around when he stands, and can only walk about a quarter of a mile. Claimant also testified that he gets irritated and anxious easily but that he can control that by removing himself from the situation.

Your residual functional capacity is your remaining physical, mental, and other abilities. Those abilities are outlined in 20 CFR 416.945.

Physical abilities. When we assess your physical abilities, we first assess the nature and extent of your physical limitations and then

determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to perform certain physical demands of work activity, such as sitting, standing, walking, lifting, carrying, pushing, pulling, or other physical functions (including manipulative or postural functions, such as reaching, handling, stooping or crouching), may reduce your ability to do past work and other work.

Mental abilities. When we assess your mental abilities, we first assess the nature and extent of your mental limitations and restrictions and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to carry out certain mental activities, such as limitations in understanding, remembering, and carrying out instructions, and in responding appropriately to supervision, coworkers, and work pressures in a work setting, may reduce your ability to do past work and other work.

20 CFR 416.929 says that statements about your pain or other symptoms will not alone establish that you are disabled, there must be medical signs and laboratory findings which show that you have a medical impairment(s) which could reasonably be expected to produce the pain or other symptoms alleged. This record contains no medical evidence of any physical or mental limitations. This record contains no medical evidence of signs and/or laboratory findings which would be expected to produce the pain Claimant alleges.

In the absence of medically determined physical or mental limitations Claimant is found to have the RFC to perform sedentary, light, medium, and heavy work. All of Claimant's past relevant work falls within his RFC. Claimant is found ineligible at this step because he is able to perform his past relevant work.

STEP 5

At the fifth step, your residual functional capacity (RFC) is considered along with your age, education, and work experience to see if you can make an adjustment to other work you

have not previously done. If you have a combination of sufficient remaining abilities and transferable skills to adjust to other work, you are not disabled.

Claimant is a person of advanced age over 55, with a high school education, a history of unskilled work, and the residual functional capacity to perform heavy work. Section 204.00 of the Social Security Administration Medical-Vocational Guidelines states:

The residual functional capacity to perform heavy work or very heavy work includes the functional capability for work at the lesser functional levels as well, and represents substantial work capability for jobs in the national economy at all skill and physical demand levels. Individuals who retain the functional capacity to perform heavy work (or very heavy work) ordinarily will not have a severe impairment or will be able to do their past work—either of which would have already provided a basis for a decision of "not disabled".

Claimant is found ineligible at this step because he is able to perform all levels of work and does not have a severe impairment.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services properly determined that Claimant is not disabled and denied Claimant's application for Medical Assistance (MA) based on disability.

It is ORDERED that the actions of the Department of Human Services, in this matter, are UPHELD.

/s/ _____
Gary F. Heisler
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: September 22, 2009

Date Mailed: September 25, 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.

GFH [REDACTED]

cc:

[REDACTED]