

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: 2009-11630

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 14, 2009

Kalamazoo 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 14, 2009. Claimant personally appeared and testified. Claimant was represented by [REDACTED], Attorney at Law.

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 22, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On November 20, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On November 25, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On December 9, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On January 29, 2009, the State Hearing Review Team (SHRT) again denied claimant's application stating that he retains the capacity to perform a wide range of simple, unskilled work. P.L. 104-121 was cited due to the materiality of drug and alcohol abuse.

(6) Claimant submitted additional medical information following the hearing which was forwarded to SHRT for additional review. On May 5, 2009, SHRT once again determined the claimant did not meet disability criteria, citing same reasons as in January 29, 2009, decision.

(7) Claimant is a 50 year-old man whose birth date is [REDACTED] Claimant is 5' 11" tall and weighs 195 pounds. Claimant attended the 6th grade and does not have a GED. Claimant is not able to read, write or do basic math.

(8) Claimant states that he last worked in 2007 for his brother's company, a mobile home repair business, as a laborer for 6 months, but was let go. Claimant also worked for a small company as a laborer cleaning up construction sites from 1999 to 2006, when he was laid off due to lack of work. Claimant received Unemployment Compensation Benefits in 2007 until they ran out.

(9) Claimant testified that he cannot work at the present time because he cannot read and there are no labor jobs available.

(10) Claimant is living in a homeless shelter for the last 10 weeks due to a pending domestic violence charge that caused him to leave his marital home. Claimant has no driver's license because of drunk driving offenses from 15-16 years ago.

(11) Claimant alleges as disabling impairment recurrent manic depression.

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 2007. 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 that has lasted or is expected to last for duration of at least 12 months. The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a

result, the department may only screen out claims at this level which are “totally groundless” solely from a medical standpoint. The *Higgs* court used the severity requirement as a “*de minimus* hurdle” in the disability determination. The *de minimus* standard is a provision of a law that allows the court to disregard trifling matters.

The objective medical evidence on the record includes records from [REDACTED] [REDACTED] from 1971 to 1974 when the claimant was admitted there at age 13 due to behavior problems. Claimant had a history of chaotic home environment marked by poor relationship between his parents, and a physically and sexually abusive father.

On [REDACTED] claimant came to the emergency department stating he was depressed and that he had thoughts of suicide, that he lived with his “abusive wife” who is very verbally and mentally abusive to him, and also that her 17 year-old son is now becoming involved too. Claimant related his childhood physical and sexual abuse, and often throughout the interview stated that he is not educated and that he is unable to read and never graduated from any high school program. Claimant stated he has never received any outpatient counseling aside from the treatment he received at the State Hospital. Claimant also stated that he has not worked in the last 2 years because he was unable to find work.

Claimant was seen by a psychiatrist who noted that the claimant has a history of alcohol abuse, he drinks as much as he can afford, in the recent past he is only been drinking 2 or 3 times a week up to a 6 pack if he can afford that. Claimant also smokes marijuana, but that apparently has decreased also because of lack of income. Claimant’s thought content was sequential and logical, and did not reveal any hallucinations or helplessness; his affect was appropriate to thought content but somewhat blunted. Claimant was oriented, his memory intact, intellectual functioning adequate, he had some insight, and his judgment was fair. At the time claimant was

not suicidal or homicidal. Claimant was diagnosed with major depressive disorder, recurrent, moderate, substance abuse disorder, alcohol and cannabis. Claimant's GAF was 50.

Claimant was discharged on June 30, 2008 and it was noted in the Psychiatric Discharge Summary that his GAF at that time was 60. Claimant participated in group therapy and was started on antidepressant medication during his stay at the hospital. Claimant's mood and affect improved in short order during his stay and at the time of discharge, he was feeling better and was denying suicidal ideation (Department's Exhibit I, pages 15-22).

On [REDACTED] claimant again came to the emergency room after being transported there by one of his friends who dropped him off and left. Claimant stated that he just felt suicidal, that he was in jail yesterday for a domestic violence charge against him, and that he tried to hang himself with a blanket while in jail. Claimant reported as his current stressors going to jail, being unemployed, being illiterate, financial issues and the relationship with his wife. Claimant had suicidal ideation, felt depressed, sad and overwhelmed. Claimant further reported that his sleep is low, and that he has not slept in 2 days because he was up drinking. Claimant stated that he uses alcohol "whenever I can get a hold of it", and will drink as much as he can. Claimant denied any inpatient substance abuse treatment, but does report he has attended AA meetings on an outpatient basis in the past. Claimant's blood alcohol level was 0.129. Claimant further stated that his current medications are supposed to be Xanax and some antidepressant, but that he missed an appointment with his primary care physician for refills, and has been off his medications for 2 weeks.

Mental Status Examination indicates that the claimant is neat, clean and weather appropriate. Claimant's psychomotor activity is within normal range, he is alert and oriented to person, place, time and day, his speech progression is normal, and there are no signs of thought

blocking, disorganized speech or tangential speech. Claimant's mood is sad and depressed, and he states that he is suicidal with a plan to hang himself.

Psychiatric History and Physical quotes the claimant as saying he had recently increased his alcohol use when he ran out of meds and has been drinking approximately 6 pack of beer per day, and drank a pint of Black Velvet alcohol the night before his hospital admission.

Claimant was admitted to the Adult Inpatient Psychiatric Unit and discharged on September 19, 2008. It was noted that the claimant could not return to his marital home as his family had taken out a restraining order after he had an altercation with his 18 year-old stepson and was taken to jail. Claimant was alert and oriented to person, place and time at the time of discharge, and in no acute distress. His attention and concentration were much improved, his mood more bright and upbeat, but he felt a bit anxious due to his personal situation with his wife, issues with housing, and applying for disability. Claimant denied any auditory or visual hallucinations, any suicidal or homicidal ideation, and his insight and judgment were improved as well as his impulse control (Department's Exhibit I, pages 24-33).

Psychiatric/Psychological Examination Report for date of examination of [REDACTED] describes the claimant as arriving for his appointments on time or early, and being appropriately dressed and attending to his personal needs such as grooming, hygiene and preparing meals. Claimant could carry on conversation and stay on subjects. Claimant is described as having difficulty with remembering simple information such as address and phone number but able to get to his home, and it is noted that he keeps all important information written down. Claimant's diagnosis is major depressive disorder, recurrent, and high blood pressure, and his issues include pending assault charges, marital problems, housing and economic

problems. Claimant's GAF is currently 50 compared to last year's of 40 (Department's Exhibit I, pages 36-39).

Claimant's psychologist also completed an undated letter received by the Administrative Law Judge on April 29, 2009, stating there is nothing new regarding the claimant, he continues to reside at the Gospel Mission and is working with the probation department to start completing his conditions of probation. Claimant is currently clean and sober and is learning to handle many stressful situations, and he has also starting working through the literacy program at the public library so he can learn to read. Claimant's prognosis is still considered guarded because of his history of depression, anxiety, suicide attempts, and sexual abuse.

Claimant's hearing testimony is that he no longer drinks or smokes marijuana as of 6 months ago, that he has problems relating to other people, has social phobias and crying jags at night if alone. Claimant also testified that he has problems with memory and directions and that he is not able to complete applications. Claimant states that he has no physical problems with sitting or standing, and that he walks around town on a daily basis.

While evidence presented clearly establishes that the claimant had a very difficult childhood, he did not have any psychological treatment in his adult life (at least none established by evidence presented) until June, 2008. Claimant's admissions for mental health treatment in June, 2008 and September, 2008 were due to his feelings of depression and suicidal ideation. However, on both occasions claimant had been drinking, and prior to second admission failed to have his prescription for antidepressants renewed so he did not take medications for two weeks. Claimant had been employed from 1999 to 2006 and in 2007 in simple labor jobs, so neither his mental condition or his inability to read and write prevented him from being able to work. Claimant also collected UCB in 2007 after he was laid off from his job due to lack of work, and

therefore had to present himself as being medically available for work in order to receive such benefits. Claimant's mental condition improved during his two hospitalizations in June, 2008 and September, 2008 as he sobered up, had proper diet, and took appropriate medications.

There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant does not cite any physical impairments. This Administrative Law Judge finds that the medical record combined with claimant's own hearing testimony about his mental condition is insufficient to establish that claimant has a severely restrictive mental impairment.

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 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, if claimant had not already been denied at Step 2, the Administrative Law Judge would have to deny him again based upon his ability to perform past relevant work. Claimant's past relevant work was doing simple labor jobs. Claimant's medical record does not support a finding that he cannot perform such jobs at the present time, and claimant testified that he cannot find a job because there are none available, not because he could not perform them.

Finding that the claimant is unable to perform work which he has engaged in in the past cannot therefore be reached and the claimant is 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 that he lacks the residual functional capacity to perform tasks from his prior employment, or that he is physically unable to do other work if demanded of him. 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 light, sedentary and medium work, or even heavy work. Under the Medical-Vocational guidelines, an individual closely approaching advanced age (age 50), with limited education and an unskilled work history who can perform medium work is not considered disabled pursuant to Medical-Vocational Rule 204.00(H).

Even if the claimant was found to meet the disability criteria at any of the five steps of the analysis, the Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) is material to a person's disability and when benefits will or will not be approved. The regulations require the disability analysis be completed prior to a determination of whether a person's drug and alcohol use is material. It is only when a person

meets the disability criterion, as set forth in the regulations, that the issue of materiality becomes relevant. In such cases, the regulations require a sixth step to determine the materiality of DAA to a person's disability.

When the record contains evidence of DAA, a determination must be made whether or not the person would continue to be disabled if the individual stopped using drugs or alcohol. The trier of fact must determine what, if any, of the physical or mental limitations would remain if the person were to stop the use of the drugs or alcohol and whether any of these remaining limitations would be disabling. Claimant testified that he has abstained from alcohol and drugs for the last 6 months. It is apparent that claimant's mental state was affected by use of such substances in the past, as he had not been hospitalized for any mental problems (i.e. depressions and suicidal ideations) since September, 2008, when he abused alcohol prior to the hospital admission. Therefore, it must be concluded that claimant's use of alcohol and drugs would be material to the issue of his possible disability, if he met the disability criteria at any of the five steps.

The claimant has not 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). Although the claimant has cited medical problems, 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, light, medium and heavy 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: June 25, 2009

Date Mailed: June 26, 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.

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