

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: 2009-19328
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 28, 2009
Saginaw 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 July 28, 2009. Claimant personally appeared and testified.

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 July 8, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On February 12, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On February 24, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On March 4, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On May 4, 2009, the State Hearing Review Team (SHRT) again denied claimant's application due to insufficient evidence, and suggested additional medical information be obtained to assess the severity of his impairments, namely a mental status examination with a psychiatrist or psychologist.

(6) This additional medical information was submitted to SHRT for review following the hearing. On August 3, 2009, SHRT determined that the claimant is not disabled, as he retains the capacity to perform a wide range of unskilled work per Vocational Rule 204.00 and 20 CFR 416.968(a) as a guide.

(7) Claimant is a 41 year-old man who is 5'7" tall and weighs 155 pounds. Claimant completed 12th grade and can read, write and do basic math.

(8) Claimant states that he last worked in January, 2007 doing inventory for a company, job that lasted him 90 days and that ended because his boss discriminated against him. Claimant also worked for a corporation sorting parts for 10 years on and off, up to year 2005. Claimant performed labor-type jobs most of his life.

(9) Claimant currently has no income and thus far survived on 401 K funds and settlement funds he received. Claimant receives food stamps.

(10) Claimant alleges as disabling impairments: bipolar disorder, ADHD, flank pain, depression, and a separated right shoulder that "pops" out with regular activities.

(11) Claimant has applied for SSI first part of 2008 and been denied, and is appealing this denial.

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 January, 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 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 consists of records going back to 1999. In year 2003 claimant was on temporary disability from his employment and was seeing a therapist.

Claimant also saw a psychiatrist to whom he admitted that he drinks alcohol and becomes angry and violent when he does so, due to issues from his childhood. Claimant was referred to AA and AlAnon due to being in a relationship with an alcoholic, but did not appear to follow up on these recommendations.

██████████ psychological evaluation of ██████████, indicates that the claimant was referred for counseling to help with reported chronic pain, but that his verbalized chronic kidney and liver pain has not been substantiated medically. Claimant contended that his liver and kidney pain is the result of taking Depakote to help stabilize his mood. Previous therapy and psychiatric consultation at ██████████ indicates as claimant's diagnoses alcohol abuse and an Adjustment Disorder. Claimant also reported being diagnosed as suffering from a bipolar disorder in 1996. Claimant became increasingly agitated during his interview and complained about his employer conspiring against him, to the point that the evaluation was terminated early. Claimant was to contact the agency to finish the evaluation, but did not do so. Claimant's diagnosis was that of bipolar disorder, and it was recommended that he seek medication and therapy in the near future or his psychological state could deteriorate.

Note on the Medical Examination Report signed by an urologist on ██████████ states that the claimant has not been seen in his office since May, 2004.

X-ray of claimant's cervical spine of ██████████, due to complaints of pain/osteoarthritis/possible fracture indicates a normal study, as well as the x-ray of the same date of claimant's chest and bilateral ribs.

Renal ultrasound of claimant's kidneys of ██████████, indicates essentially normal exam with tiny cysts in the left kidney.

X-ray of claimant's thoracic spine of [REDACTED], for complaints of back and rib pain was negative.

X-ray of claimant's right shoulder, right elbow and right hand of [REDACTED], indicates normal examination.

Doctor's visit notes of [REDACTED], for back pain describes the claimant as well developed, well nourished, good looking male with pain syndrome and in no acute distress. Claimant was not currently taking any medication. Claimant's diagnoses were anxiety, depression, insomnia, lumbago, muscle spasm and neuropathy. Claimant was also seen on [REDACTED], for congestion and was not taking any medication at that time either.

Saginaw County CMH Authority Initial Intake of [REDACTED], states that claimant reported as his current medical problems dislocated shoulder, liver and kidney problems. Claimant also reported currently being in an abusive relationship with an alcoholic that has lasted for three years, and that there is a lot of domestic violence in his relationship. Claimant denied alcohol or other substance abuse issues. Claimant was living with his girlfriend. Claimant was diagnosed with bipolar disorder, manic, moderate, and generalized anxiety disorder.

Psychological report of [REDACTED] upon referral for an evaluation by DHS indicates that the claimant drove himself but stated it is difficult to drive. Claimant reported living alone and not having any close friends. Claimant stated that he struggles with a mutilated shoulder, back pain, and depression. Claimant was not taking any medications, and reported attending mental health therapy for 10 years and being psychiatrically hospitalized on 2 occasions. Claimant denied any previous substance abuse treatments and denied any history of substance abuse. Claimant appeared to be in contact with reality, his thoughts were spontaneous and well organized, and there were no problems in pattern or content of speech. Claimant denied any presence of auditory or visual hallucinations, delusions, obsessions, persecutions, or unusual

powers. Claimant appeared depressed throughout the evaluation. Results of the mental status examination revealed abnormalities in concentration, general knowledge, judgment, abstract reasoning, and calculation tasks. Claimant's diagnosis is that of major depressive disorder, recurrent, without psychotic features, GAF of 45, and poor prognosis.

There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical impairment. X-rays of claimant's spine, ribs, shoulder and hands that were provided do not show any abnormalities. Claimant had only had a small kidney stone according to the medical information from several years ago. Claimant had not been taking any medications as of his last documented doctor's visit of November, 2008. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

There is no evidence in the record indicating that claimant suffers severe mental limitation. Claimant was in therapy in 2003 and 2004 at the request of his then employer. Claimant's record does show that he has had and has mental health issues. Claimant's record however also shows that while he denied alcohol abuse on many occasions, he did admit such abuse to a psychiatrist in 2003. Claimant was to be on medications and to attend AA, but has not done so. Claimant has not provided any mental health treatment records after 2004 and went to CMH in June, 2009 for initial intake, and therefore does not appear to have been in any type of such treatment/therapy for over 4 years. The evidentiary record is insufficient to find claimant suffers 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. 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 at least medium 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 sedentary, light and medium work. Under the Medical-Vocational guidelines, a younger individual age 18-44 (claimant is 41 years of age), with high school education and an

unskilled work history who can perform medium work is not considered disabled pursuant to Medical-Vocational Rule 203.28. It is noted that even if the claimant was only capable of sedentary work, illiterate or unable to communicate in English, and had no work history, he would still not be considered disabled per Vocational Rule 201.23.

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 light, sedentary and medium 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: December 1, 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 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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