

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: 2009-24892

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

July 21, 2009

Muskegon 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 21, 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 November 12, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On January 16, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On January 21, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On March 10, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On June 15, 2009, the State Hearing Review Team again denied claimant's application stating he was capable of performing a wide range of simple, unskilled, medium work per Vocational Rule 203.28.

(6) Claimant is a 33 year-old man whose birth date is [REDACTED]. Claimant is 6' 3" tall and weighs 432 pounds as of July, 2009. Claimant states he is starting on an exercise regimen and has lost weight through diet and walking 5-7 miles per day.

(7) Claimant has a high school diploma and 3 years of college towards a B.A. degree in culinary arts. Claimant states he had to quit college 4 years ago because his financial aid was cut off. Claimant can read, write and do basic math.

(8) Claimant states that he last worked in 2005 as a short order cook for 3 months, job he was fired from, due to not being able to concentrate, having manic episodes and racing thoughts. Claimant has also worked at a restaurant as a baker for 5 months in 2004, from which he was also fired, was a security guard, and held other short term jobs. Claimant states he could never keep any one job for more than a year.

(9) Claimant currently lives with a roommate in a trailer and pays no rent, and friends and his father help him financially. Claimant spends his days playing video games, watching horror movies, watching TV and fishing on a nearby lake.

(10) Claimant alleges as disabling impairments: diabetes, high blood pressure, bipolar disorder, borderline personality disorder, poor concentration due to bi-polar medications, and possible ADD.

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 2005. 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 objective medical evidence on the record includes a psychiatric evaluation following a hospital admission of [REDACTED], when the claimant stated he took an overdose of Ambien. Claimant related that he had been having trouble sleeping and with depression, decided he could not handle the stress anymore and decided to end it all. Claimant stated he has had manic episodes in the past, that he has periods of obsessive behavior where he does not sleep for days, and that he plummets into depression where he gets sadness of mood, paranoid ideations, self-consciousness, feeling of isolation, hopelessness and helplessness. Claimant stated he had never had a psychotic episode, he has had cutting episodes in the past to relieve pain, but this is his first suicide attempt. Claimant related that he is currently having a stressful relationship with a person married to another, and this has led to a lot of issues.

Mental Status Examination states that a claimant is a 350+ pounds, dressed appropriately, and pleasant and cooperative. Claimant made good eye contact; his speech was normal tone and volume, goal directed, relevant, coherent, but with some pressure. Claimant's thought process was organized, no delusions, no hallucinations, some paranoid ideation, more like self-consciousness. Claimant has low stress tolerance, difficulty in tolerating frustration, his judgment was fair and insight partial, he endorses a lot of symptoms of borderline personality, with black and white thinking. Diagnosis was that of bipolar type 2, borderline personality disorder, and relationship issues. Claimant was admitted to the hospital and mood stabilizer medications were started.

Claimant's physical examination revealed no abnormalities. Claimant does have diabetes mellitus type 2, is morbidly obese, and has hypertension.

Social Work Evaluation of [REDACTED], states that the claimant reports he has never been hospitalized in a psychiatric unit before, although he was seen as a child at the local

Community Mental Health. Claimant was oriented to the 3 spheres and mood and affect for the most part were appropriate, he denied any depression at that time, but he does report some paranoia. Claimant also denied any audio or visual hallucinations. Claimant stated he was unemployed but has been looking for work for 2 years. Claimant was not receiving any Community Mental Health counseling at the time. Claimant stated he drinks alcohol 1 to 2 times per month but only on a social basis, and that he has not used marijuana in the last 6 months. Claimant was to be referred to County Community Mental Health for post discharge treatment and follow up.

Psychiatric Evaluation of [REDACTED], quotes the claimant as saying he lives in a house with some friends and their children, around 10 people all together, thus making it somewhat of a chaotic household. Claimant chief complaint is that he needs to get his mood stabilized. It is noted that the claimant's only psychiatric hospitalization is of [REDACTED] following the suicide attempt, he has never had any out patient treatment, and that he has never tried any psychotropics for any reason in the past. Claimant had not been taking medications for diabetes mellitus, but following his hospital stay he is now taking them in addition to hypertension medications and psychotropics. Claimant's speech is normal rate and tone, his mood has been depressed according to him, but he feels with the help of medications things are starting to turn around. Claimant's affect is full and spontaneous, he denied any perceptual disturbances, there was no evidence of any thought disorder, and he denied any suicidal or homicidal ideations. Claimant was diagnosed with Bipolar Type II Mood Disorder, depressed, Cluster B Personality Traits, Type II diabetes mellitus, hypertension, conflicts with boyfriend, father's declining physical health and financial difficulties were cited, and he had a GAF of 56. Claimant was to continue on medications.

Psychosocial Assessment of [REDACTED], states that the claimant is very happy with his present medications which are stabilizing his mood and make him feel better than he ever has. Support coordination services and therapy services to deal with past issues of abuse and with self-esteem were recommended.

Community Mental Health Services Physicians Progress Note of [REDACTED] indicates that the claimant is doing rather well and stated this is the best that he has ever felt in his life. Claimant has positive future goals, such as returning back to school, and also wants to continue with therapy. Claimant was warned of the danger that when people start to feel better, their first inclination is to stop their medications and feel that they can do it on their own, and responded that he will not fall into that trap. Claimant's mood was good, his affect broad and spontaneous, speech coherent, though processes relevant, there was no evidence of any thought disorder and he denied any perceptual disturbances, suicidal or homicidal ideation. Claimant's current GAF was 60.

Claimant was asked at the hearing if he had any additional reports from Community Mental Health and stated while he was going for therapy every 2 weeks he missed an appointment and the therapist dropped him. Therefore, it appears that the claimant has not engaged in suggested ongoing therapy to monitor his bipolar condition. Claimant testified that he is still on psychotropic medications that were cited as helping his mood greatly.

There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. This Administrative Law Judge finds that the medical record combined with claimant's own hearing testimony about his physical condition is insufficient to establish that claimant has a severely restrictive physical impairment. Claimant has diabetes but testified that he is on a diet and exercise regimen and is starting to lose weight,

and that he is also taking medications for this condition, both important steps towards controlling it. Claimant is walking 5-7 miles per day and therefore does not appear to have any physical limitations.

There is no evidence in the record indicating that claimant suffers mental limitation. The evidentiary record is insufficient to find claimant suffers a severely restrictive mental impairment. While the claimant did take an overdose of Ambien in October, 2008 due to what appears to be relationship issues with his father and significant other, psychotropic medications he was placed on helped him significantly to improve his mood. 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 being a short order cook, baker and security guard, jobs he claims he lost because he could not concentrate on job duties and had manic episodes. Claimant's psychotropic medications have helped him with these issues according to the medical

record that quotes the claimant as saying so. Claimant has advanced college training in culinary art and should therefore be able to perform in a job as a cook and/or a baker. 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 33 years of age), who is even illiterate or unable to communicate in English and with unskilled or no work history who can perform only sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.23. Claimant has 3 years of college and should be able to perform more than sedentary work, and does have a varied work history.

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: September 2, 2009

Date Mailed: September 9, 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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