

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg No. 200925059
Issue No. 2009/4031
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: October 8, 2009
Washtenaw County DHS

ADMINISTRATIVE LAW JUDGE: Jana A. Bachman

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, an in-person hearing was held on October 8, 2009. Claimant was represented by [REDACTED].

ISSUE

Whether claimant has established disability for Medical Assistance (MA) 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. February 9, 2009, claimant applied for MA and SDA.
2. April 8, 2009, the Medical Review Team (MRT) denied claimant's application. Department Exhibit A.
3. April 15, 2009, the department sent claimant written notice that the application was denied.
4. April 27, 2009, the department received claimant's timely request for hearing.

5. June 15, 2009, the State Hearing Review Team (SHRT) denied claimant's application. Department Exhibit B.
6. October 8, 2009, the in-person hearing was held. Prior to the close of the record, claimant requested the record be left open for submission of additional medial evidence. Claimant waived the right to a timely hearing decision. October 13, 2009, after review of all medical evidence, the SHRT again denied claimant's application. SHRT Decision, 10-13-2009.
7. Claimant asserts disability based on impairments caused by a non-healing abdominal incision, MRSA infection, bipolar disorder, obsessive compulsive disorder, back pain, Hepatitis C, hearing loss, and asthma.
8. Claimant testified at hearing. Claimant is 50 years old, 5'10" tall, and weighs 190 pounds. Claimant completed high school and has an Associate Degree in Lodging/Restaurant. Claimant is able to read, write, and perform basic math. Claimant cares for his needs at home.
9. Claimant's past relevant employment has been as a janitor, forklift driver, grocery stocker, and performing general labor and odd jobs.
10. December 23, 2008, claimant underwent a psychiatric evaluation and a narrative report was prepared that indicates AXIS I diagnoses of opioid dependency, anxiety disorder, and bipolar disorder. GAF was assessed at 60. The report indicates that claimant was cooperative and engageable with irritable demeanor. Mood was assessed as anxious and irritable. Affect was semi-restricted and congruent with verbal content. Thought process was linear and goal-directed. Thought content was absent suicidal or homicidal ideation with no psychotic quality noted or endorsed. Executive function, attention, and recall intact at interview. Insight fair. Judgment fair to good. Examiner opines that claimant's mood symptoms have been variable over time, but have not clearly constituted a disability and claimant has not been engaged in any meaning psychiatric treatment for them due to the effects of chronic addictive disease and noncompliant. On the other hand, claimant's addictive disease is causing his behavior to be organized around obtaining and using opioids along with attempting to resolve the related life consequences has been disabling. Department Exhibit A, pgs 127-131.

11. June 25, 2009, claimant underwent an independent psychological exam. The prepared report indicates AXIS I diagnoses of longstanding polysubstance dependencies and recent remission with associated mood and impulse disturbances. GAF was assessed at 50-55. At exam, claimant's cognitive functions were within normal limits. Claimant appeared to have low self-esteem, low motivation, and depression. Claimant was assessed to have a moderate ability to respond appropriately to work pressures in a work setting. He had a slight impairment and ability to respond appropriately to changes in a routine work setting. He had no impairments of any other areas. Department Exhibit A, pgs 118-125.

12. July 18, 2009, claimant underwent an independent physical exam. A narrative report was prepared. Physical exam revealed neck is supple with no thyroid masses or goiter. No bruits appreciated over carotid arteries. No lymphadenopathy. AP diameter is grossly normal. Lungs are clear to auscultation without any adventitious sounds. Heart has normal S1 and S2 with no murmurs or gallops. Heart does not appear to be clinically enlarged and PMI is not displaced. Abdomen has midline bandage from previous hernia repair. Abdomen is soft and nontender without distention. There are no masses felt, nor is there enlargement of the spleen and liver. There are no obvious bony deformities. Range of motion of all joints is full. There is pain in the bilateral knee joints. Movement at the hip and knee joints bilaterally did illicit pain. Peripheral pulses are easily palpated and symmetrical. There is no edema. There is no evidence of varicose veins. Grip strength is unimpaired. Hands have full dexterity. Straight leg test was negative. There was no paravertebral muscle spasm. Claimant had no difficulty with heel and toe walking. Motor strength remained intact at 5/5. Reflexes were 2/4 and symmetrical. There was no loss of sensation. Cranial nerves 2-12 were intact. There was no disorientation noted. Patient reports history of Hepatitis C that is presently untreated. No enlarged mass was noted in the right upper quadrant on exam. Patient reported hearing loss worse in the right ear versus the left ear. Patient states he has been previously evaluated and has loss of high pitch tones in the right ear. Significant hearing loss was not noted on exam today, but patient does reveal he is able to hear male voices better than female voices. Department Exhibit A, pgs 115-117.

13. On or about September 29, 2009, claimant's surgeon wrote a letter to his family physician indicating that on September 14, 2009, claimant underwent surgery due to a recurring surgical wound infection. Claimant had sustained the infection in May 2009. The surgeon indicates that claimant's wound appears to be healing well and recommends that he continue with wound VAC therapy for two weeks. Claimant Exhibit A, pgs A19-A20. Physical examination that occurred in March 2009 revealed a small amount of purulent drainage. Abdomen was otherwise soft, nondistended, and without any tenderness to palpation in all four quadrants. Claimant was to be scheduled for surgery. Claimant Exhibit A, pgs A4-A5. May 2009 surgical notes indicate that claimant had mesh covering the hernia wound removed due to infection. Claimant Exhibit A, pgs A6-A11.

14. January 8, 2008, claimant underwent x-rays of the cervical spine. The prepared report indicates mild anterolisthesis at C3-C4 likely due to degenerative changes and facet hypertrophy with mild neuroforaminal narrowing bilaterally at C3-C4 left greater than right and mild degenerative changes at C5-C6 and C6-C7. X-rays of the thoracic spine revealed compression fracture at T9, T11 and T12 of indeterminate age and up to 30 to 40 percent loss of height anteriorly. Lumbar spinal x-rays revealed mild left scoliosis of the lumbar spine with no other fractures or abnormalities of alignment. There are incompletely visualized wedge shaped compression deformities seen involving T11 and T12. Chest x-ray revealed a normal chest x-ray. Claimant Exhibit A, pgs B18-B22. January 8, 2008, claimant underwent a CT scan at the T3-T4 level and from C6-C7 through the L1-L2 level. The prepared report indicates no acute spinal fractures from foramen magna to L1-L2 level. Chronic appearing compression deformities of T9, T11, and T12 vertebral bodies. Cervical spondylosis and possible disc bulging/protrusion. Claimant Exhibit A, pgs B29-B30. CT scan of the head revealed a tiny superficial right frontal lobe hemorrhage. Claimant was diagnosed with mild concussion due to running into a tree with his snowmobile. Claimant Exhibit A, pgs B31-B32.

15. November 3, 2008, claimant presented to hospital complaining of chronic abdominal pain. Claimant was also diagnosed with polysubstance abuse and acetaminophen overdose. Claimant had apparently been admitted to hospital and had left against medical advice on November 3 after having used heroine, alcohol, and Vicodin. He returned to hospital for treatment on the 3rd. Psychiatric records indicate claimant is going through opiate withdrawal. In addition, he continues to suffer from abdominal pain due to drainage from abdominal wound. Claimant was discharged on November 6, 2008. Claimant Exhibit A, pgs C24-C59.

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).

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 do 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).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

If an individual fails to cooperate by appearing for a physical or mental examination by a certain date without good cause, there will not be a finding of disability. 20 CFR 416.994(b)(4)(ii).

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 so is not disqualified from receiving disability at Step 1.

At Step 2, the objective medical evidence of record indicates that claimant has a recurring and persistent infection in an abdominal incision. He has been repeatedly treated for this condition over the period of 2008 and 2009. Claimant has history of Hepatitis C, repeated physical exam revealed no enlargement or distention in the right upper quadrant of his body. Physical exam revealed pain in his knees and hips. X-rays and CT scan revealed degenerative changes in his spine. Range of motion, strength, and tone are full in all extremities. Claimant has been diagnosed with longstanding polysubstance dependencies which were in recent remission in June 2009. He was also diagnosed with mood disorder and impulse disturbances related to polysubstance dependencies. Claimant also has obsession compulsive disorder. GAF has ranged from 50 to 60, indicative of serious to mild symptoms or difficulties. Finding of Fact 10-15; DSM IV, 1994 R.

At Step 2, the objective medical evidence of record is not sufficient to establish that claimant has severe impairments that have lasted or are expected to last 12 months or more and prevent employment at any job for 12 months or more/ Therefore, claimant is disqualified from receiving disability at Step 2.

At Step 3, claimant's impairments do not rise to the level necessary to be specifically disabling by law.

At Step 4, claimant's past relevant employment has been as a janitor, forklift driver, grocery stocker, and performing general labor and odd jobs. See discussion at Step 2 above. Finding of Fact 9-15.

At Step 4, the objective medical evidence of record is not sufficient to establish that claimant has functional impairments that prevent claimant for a period of 12 months or more from engaging in a full range of duties required by claimant's past relevant employment. Therefore, claimant is disqualified from receiving disability at Step 4.

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).

At Step 5, see discussion at Step 2 above. Finding of Fact 8-15.

At Step 5, the objective medical evidence of record is sufficient to establish that claimant retains the residual functional capacity to perform general work activities. Accordingly, claimant is not disabled and is disqualified from receiving disability at Step 5.

Claimant does not meet the federal statutory requirements to qualify for disability. Therefore, claimant does not qualify for Medical Assistance based on disability and the department properly denied claimant's application.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2001 PA 82. The Family Independence Agency (FIA or agency) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Agency policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

Sec. 604 (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of

age or emancipated minors meeting one or more of the following requirements:

- (a) Recipient of Supplemental Security Income, Social Security or Medical Assistance due to disability or 65 years of age or older.
 - (b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.
 - (c) A resident of an adult foster care facility, a home for the aged, a county infirmary, or a substance abuse treatment center.
 - (d) A person receiving 30-day post-residential substance abuse treatment.
 - (e) A person diagnosed as having Acquired Immunodeficiency syndrome (AIDs).
 - (f) A person receiving special education services through the local intermediate school district.
 - (g) A caretaker of a disabled person as defined in subdivision (a), (b), (e), or (f) above.
- (2) Applicants for and recipients of the State Disability Assistance program shall be considered needy if they:
- (a) Meet the same asset test as is applied to applicants for the Family Independence Program.
 - (b) Have a monthly budgetable income that is less than the payment standard.

- (3) Except for a person described in subsection (1)(c) or (d), a person is not disabled for purposes of this section if his or her drug addiction or alcoholism is a contributing factor material to the determination of disability. 'Material to the determination of disability' means that, if the person stopped using drugs or alcohol, his or her remaining physical or mental limitations would not be disabling. If his or her remaining physical or mental limitations would be disabling, then the drug addiction or alcoholism is not material to the determination of disability and the person may receive State Disability Assistance. Such a person must actively participate in a substance abuse treatment program, and the assistance must be paid to a third party or through vendor payments. For purposes of this section, substance abuse treatment includes receipt of inpatient or outpatient services or participation in Alcoholics Anonymous or a similar program. 1995 PA 156, Sec. 605.
- (4) A refugee or asylee who loses his or her eligibility for the federal Supplemental Security Income program by virtue of exceeding the maximum time limit for eligibility as delineated in Section 402 of Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 U.S.C. 1612, and who otherwise meets the eligibility criteria under this section shall be eligible to receive benefits under the State Disability Assistance program.

After careful examination of the record and for reasons discussed at Steps 1-5 above, the Administrative Law Judge decides that claimant has severe impairments that prevent work for 90 days or more. Therefore, claimant meets the disability requirements for State Disability Assistance based on disability.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, decides that claimant has not established disability for Medical Assistance and State Disability Assistance.

Accordingly, the department's action is, hereby, UPHELD.

/s/

Jana A. Bachman
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: March 1, 2011

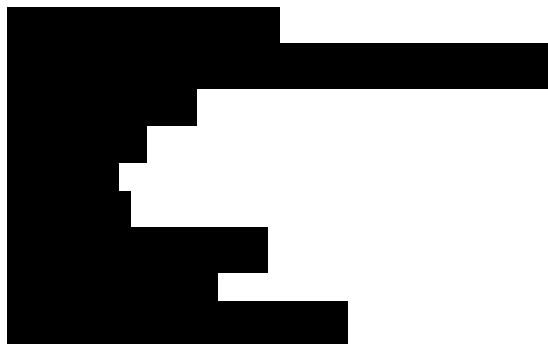
Date Mailed: March 3, 2011

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 receipt 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.

JAB/db

cc:

A large black rectangular redaction box covers the names of the recipients listed in the 'cc:' field.