

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: 2009-27637
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 6, 2009
Iosco 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 August 6, 2009. Claimant personally appeared and testified. Also appearing on claimant's behalf was [REDACTED], [REDACTED].

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 February 4, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On May 8, 2009, the Medical Review Team denied claimant's application.

(3) On May 12, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On May 26, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On July 8, 2009, the State Hearing Review Team (SHRT) also denied claimant's application due to insufficient evidence, and suggested a mental status examination be obtained.

(6) Claimant provided additional medical information following the hearing which was submitted to SHRT for review. On October 13, 2009, SHRT determined that the claimant was not disabled as he was capable of performing other work, namely medium unskilled work per Vocation Rule 203.25. SHRT also cited materiality of drug and alcohol abuse per P.L. 104-121.

(7) Claimant is a 40 year-old man whose birthday is [REDACTED]. Claimant is 5'8" tall and weighs 186 pounds with his weight fluctuating due to continued alcohol use. Claimant completed 8th grade, cannot read or write well, and can do little basic math.

(8) Claimant states that he last worked a month before the hearing in construction labor jobs, type of jobs he has done most of his life and which included installing windows, doors, vinyl siding, etc. Claimant states he has a hard time with alcohol and cannot find any permanent jobs.

(9) Claimant currently lives with friends and receives food stamps, has no driver's license due to past DUI convictions and other violations. Claimant testified that he drinks alcohol daily as much as he can get, and also smokes marijuana when he is drinking.

(10) Claimant alleges as disabling impairments: depression, back pain, seizures, and closed head injury after being beaten with a tire iron.

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 worked a month before the hearing. 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 includes emergency room records from October, 2008 where claimant came on several occasions during this month due to daughter moving away and his girlfriend getting killed. Claimant was intoxicated during both visits, but denied any suicidal intentions. Claimant wanted help with alcohol withdrawal. Claimant was to follow up with his family doctor and to stop drinking alcohol. Claimant tested positive for marijuana and opiates on [REDACTED], after he came to emergency room for medical clearance to be placed in a half way house. Claimant was obviously intoxicated and stated he drank 1 pint of liquor on that day. Daily alcohol use was noted. Alcoholism and depression were noted. On [REDACTED], claimant was again at the emergency room because he wanted to kill himself but then decided against it and called for help. Claimant was again intoxicated and tested positive for marijuana and opiates.

On [REDACTED], claimant was in jail as the note from this date is from "Melanie from the jail" and states that the claimant is not eligible for rehab because in the past he either quit or was kicked out, and is afraid of the side effects of antabuse. On [REDACTED], claimant was diagnosed with Major Depressive Disorder, recurrent, and seizure disorder, by [REDACTED], which was apparently involved with him while he was in jail.

Social Summary of [REDACTED], quotes the claimant as saying he has just been released from jail for non-payment of child support, that he has been in and out of rehab centers for alcoholism, and that he has many mental health issues.

CT of claimant's lumbar spine of [REDACTED], for complaint of pain concludes that the claimant has a normal lumbar vertebral bodies without any evidence of fractures or subluxations, no evidence of disk herniation, and normal intervertebral disk spaces. CT of claimant's cervical spine of the same date shows minimal degenerative changes predominantly at C5-C6 and C6-C7, but no evidence of fractures or subluxations.

X-rays of claimant's lumbar spine due to back pain of [REDACTED], show no compression fracture or spondylolisthesis. Claimant also had a follow up of prior subdural hematoma showing it has resolved, there is no intracranial hemorrhage, mass effect or midline shift.

X-ray of claimant's cervical spine of March, 2009 for complaint of neck pain showed no evidence of acute fracture and changes of osteoarthritis.

New information provided following the hearing includes a [REDACTED], Internal Medicine Clinic report stating that the claimant came in crying profusely with a chief concern that he is having a lot of pain issues, seizures, history of cognitive disturbances related to alcohol abuse, and memory loss because he passes out. Claimant had a history of fall yesterday and sustained a back injury, and has a big bruise on the upper thoracic area. Claimant has a past medical history of recurrent emergency room visits with episodes of subdural hematoma, and history of being in rehab once or twice with not much great success. He also has depression. Claimant stated he sustained an assault injury to his back and in the head areas in year 2005, and this ended up giving him a lot of chronic pain issues. Claimant had seen a doctor who stated he

could not do much for him unless he quits drinking. The subdural hematoma, which was noted, was quite low. Claimant's alcohol level was 308 on [REDACTED] and he had a current alcohol breath in the clinic on this day with alcohol level of 220. Claimant stated he is not compliant with his medications because he does not have any money to buy them; however he works as extra help and shovels peoples driveways to get money for alcohol. Claimant reported drinking every day at least six pack per day. Claimant was advised to be compliant with his seizure medications and stop drinking. No controlled substances could be given to him, but his Klonopin was not discontinued because it might actually end up giving him withdrawal seizures.

[REDACTED], Internal Medicine Clinic report indicates that the claimant came in after not being seen at all since [REDACTED]. Claimant had been recently seen in the emergency room on [REDACTED], with seizures secondary to withdrawals. Claimant fell down the stairs and complains of difficulty in walking. He continues to drink because of his pain not being controlled. Claimant did have quite a bit of restriction of the movements; however, he is able to ambulate well. Claimant was once again told to avoid alcohol and detox programs were encouraged, but he was not very keen on this at this point.

On [REDACTED], claimant was again at the clinic complaining of pain in his neck and in his low back, and stated that the pain in his neck is due to an injury he had in 2006. Claimant stated he had not drunk any alcohol since March 9th so he could get some pain medication for his neck and back. Claimant reported that he goes to CMH a couple of times a week, he is not suicidal, and he is trying again to get into therapy for his alcohol addiction.

MRI of claimant's cervical spine of [REDACTED], shows changes of mild spinal stenosis at C5-C6 and C6-C7 with narrowing of the neural foramina bilaterally, and with no evidence for disc bulge, herniation or spinal stenosis on remaining levels.

Claimant presented to the pain clinic in May, 2009 with complaints of posterior neck, right shoulder and upper extremity pain. After the physical examination was performed the impression is that of degenerative changes with associated radiculopathy C6-7. Plan was a series of cervical epidural injections.

[REDACTED], letter from the pain clinic indicates that the claimant completed cervical epidural injection and left greater occipital nerve block on [REDACTED]. Claimant seems to have gotten some fairly reasonable relief of discomfort with the occipital nerve block though there is some persistent posterior neck pain. He was discharged following his final appointment with a pain score of 1.

Claimant was admitted to [REDACTED] Alcohol and Drug Treatment Center on [REDACTED] for alcohol and drug therapy. Claimant reported last use of alcohol being on [REDACTED], after being discharged from the local hospital for an intentional overdose of alcohol and stoma. Claimant was in alcohol treatment last summer and then sober for two months, but relapsed when his girlfriend was murdered by her daughter's boyfriend. After [REDACTED], hospital discharge claimant drank four 40-ounce beers. Claimant also stated he abused marijuana occasionally, a couple of joints, his last use being [REDACTED]. Claimant denied any current suicidal or homicidal ideation. His general physical exam was within normal limits. Claimant was seen for both individual and joint counseling during his stay and completed goals of the program during that two week stay. Claimant was discharged on [REDACTED], with final diagnoses of alcohol dependence, cannabis abuse, bipolar, anxiety, panic disorder, paranoia, degenerative disk disease and epilepsy since 2006.

Mental Status Examination of [REDACTED], lists as claimant's complaints medical problems, a depressive disorder, a social anxiety disorder, a posttraumatic stress disorder and

cognitive deficits. Claimant described having bad dreams about 2006 beating, that his mind races, that he is staying in a homeless shelter with a bunch of other people so he is nervous all the time, there is also a bunch of holy rollers at the shelter and they are always trying to hug him which he does not like, and he does not try to go around anybody unless he is drinking.

Claimant reported that he quit drinking cold turkey a month ago, and also quit using marijuana.

Claimant arrived on time for his appointment for this examination after being driven by a DHS volunteer driver. Claimant's clothing was clean and appropriate, his hygiene was good, his posture and gait appeared to be unimpaired, and his general behavior towards the examiner was friendly and cooperative, but passive. Claimant's speech in tone, pace and volume was appropriate, and his articulation was clear. Claimant showed adequate contact with reality and his responses to questions were generally reasonable. Claimant denied present suicidal ideation but stated he thinks about suicide a lot.

Claimant was diagnosed with major depression, single episode, severe, social anxiety disorder, posttraumatic stress disorder, alcohol abuse in remission for one month, and mood disorder due to head trauma. Claimant's current GAF was 45 but he is able to manage his own funds at this time.

There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical impairment. Claimant's record does indicate that he has some neck and back issues, but they do not appear to rise to the level of severe. Claimant cites a head injury in 2006; however records show that the hematoma resulting from this injury had resolved. Claimant has also had seizures in the past, but they appear to have been brought on either by his alcohol abuse or withdrawals from such abuse. 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. It cannot be disputed that the claimant has had episodes where he overdosed on alcohol and medications, and that he appears to suffer from depression. However, it is evident from claimant's record that he has been an alcoholic for a long period of time, and that he also uses marijuana. These substances are depressants and their continued abuse would put in question whether the claimant indeed would suffer from depression if he was to abstain from them. Claimant's record shows repeated visits to the emergency room where he is severely intoxicated. Claimant's Mental Status Examination of [REDACTED], presents him as suffering from anxiety, PTSD, mood disorder, etc. Claimant has been in a homeless shelter for a month at the time of this evaluation and reported not using alcohol. Homeless shelters do not allow use of alcohol, and it is again questionable if claimant's mental state at the time of the examination is due to having to stop drinking. It is noted that claimant testified at this hearing that he drinks on a daily basis "as much as he can get", and that he also smokes marijuana when drinking. 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 performing variety of construction jobs, and that he was working one month before the hearing. Claimant testified that he cannot keep a job mainly because of his drinking. Therefore, if the claimant is not drinking there is no reason for him not to be able to work. 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 light work at the very least 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, or possibly even heavy work. Under the Medical-Vocational guidelines, a younger individual age 18-44 (claimant is 39 years of age), who is even illiterate or unable to communicate in English and has only an unskilled work history or no work history, and who can perform only light work is not considered disabled pursuant to Medical-Vocational Rule 202.16.

It is noted that even if the claimant was found to meet disability criteria, his substance abuse must be evaluated. 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.

This Administrative Law Judge, while having complete understanding of claimant's unfortunate issues with substance abuse and the difficulties he has had with trying to resolve those issues, must address such abuse in accordance with federal regulations, as was done in this decision.

In conclusion, 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 at least sedentary and light work and quite possibly

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: November 18, 2009

Date Mailed: November 19, 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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