

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. 200930331
Issue No. 2009
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: October 6, 2009
Genesee 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 6, 2009. Claimant was represented by [REDACTED]

ISSUE

Whether claimant has established disability for Medical Assistance (MA).

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. January 29, 2009, claimant applied for MA, retroactive MA, and State Disability Assistance (SDA).
2. March 16, 2009, the Medical Review Team (MRT) denied claimant's application. Department Exhibit A.
3. On or about March 16, 2009, the department sent claimant written notice the at the application was denied.
4. June 22, 2009, the department received claimant's timely request for hearing for the MA denial.

5. August 5, 2009, the State Hearing Review Team (SHRT) denied claimant's application. Department Exhibit B.
6. October 6, 2009, the in-person hearing was held. Prior to the close of the record, claimant requested the record be left open for additional medical evidence. Claimant waived the right to a timely hearing decision. March 10, 2010, after review of all medical evidence, the SHRT again denied claimant's application. SHRT Decision, 3-10-2010.
7. Claimant asserts disability based on impairments caused by a history of bilateral broken wrists, depression, bad back, and bipolar disorder.
8. Claimant testified at hearing. Claimant is 32 years old, 5'11", and weighs 165 pounds. Claimant completed high school but was diagnosed with a learning disability in reading comprehension. He is able to read, write, and perform basic math. Claimant has a driver's license and is able to drive. Claimant cares for his needs at home with assistance.
9. Claimant's past relevant employment has been as a roofer.
10. July 25, 2008, claimant underwent psychological and intelligence testing. Claimant's IQ verbal and performance scores were borderline at 72 and 70 respectively. Full scale score was 69. Examiner opined that claimant's scores were slightly lowered due to chemical influence. Bender Gestalt indicate that claimant has significant impairment in his visual motor activity. Depression and organic brain syndrome, including alcoholism are evidenced. At mental status exam, claimant seemed to be in contact with reality. Gait, posture, and motor activity appeared to be normal. Claimant appeared to exaggerate symptoms and under represent functioning ability. Claimant conveyed an opportunity of helplessness and victimization that is common among persons abusing substances. Speech was basically unimpaired although there were moments when speech seemed very slightly slurred. Stream of mental activity was spontaneous and organized. There was no significant evidence of hallucinations, delusions, persecutions, obsessions, thoughts controlled by others, or unusual powers. Claimant reported recent suicidal ideation. Affect was appropriate to mood. Mood appeared depressed. Claimant reported he was experiencing opiate withdrawal today. Claimant was oriented x 3. Doctor's opinion was that claimant's psychological condition would moderately impair his ability to perform work-related activities. AXIS I diagnoses was opioid dependence and major depressive

disorder. GAF was assessed at 55. Department Exhibit A, pgs 358-364.

11. August 18, 2008, claimant underwent an independent physical examination. A narrative report was prepared that indicates claimant walks and moves without apparent difficulty. Left elbow felt slightly swollen, particularly posteriorly in the region of the olecranon fossa. He lacks at least 30 degrees of fully extending the left elbow to neutral 0 and has reduced supination and pronation as well as flexion, complaining that all these are painful at the elbow and in the right hand. He is able to do tandem toe walking and left heel walking but complained of foot pain from a childhood injury preventing him from doing right heel walking. Deep tendon reflexes were 2+ and equal at knees and ankles. He is able to partially squat and get on an off exam table. There appeared to be no reason why he should not be able to climb stairs. Inspection of hands showed vertically oriented old 3" long, volar wrists scars from his open reductions and internal fixation. Wrist range of motion was also reduced and said to be painful in dorsal and palmar flexion. Hands showed normal color and temperature. Claimant lacked range of motion to allow for Phalen's wrist flexion testing. Tinel's produced appropriate paresthesias over the superficial branch of the radial on the left and tenderness locally only with tapping over the ulnar nerve and negative knee in responses. Right hand was slightly swollen compared to left. Neither hand fully flattens when placed on a plane surface. He is able to pick up coins. JAMAR grip strength was 50 pounds per square inch which would be considered normal in the right hand, but complained of the left being too painful to use the same exertion. Claimant appeared to have grossly normal hearing, vision, and phonation. Department Exhibit A, pgs 353-357.
12. On or about October 18, 2008, claimant was admitted to hospital complaining of syncope. Claimant was diagnosed with opioid overdose. A psychiatric exam was performed. Claimant was diagnosed with bipolar disorder, major depression, and suicidal ideation. Claimant improved with treatment and was discharged on October 23, 2008. Final diagnoses were syncope, atypical chest pain, bipolar disorder, cerebellar tonsil herniation, urinary tract infection, and opioid addiction/withdrawal. Secondary diagnoses were depression and trauma to wrist, status post surgery. Department Exhibit A, pgs 97-99, 132-260.
13. November 15, 2008, claimant was admitted to hospital complaining of syncope and heart palpitation. Objective medical examination and testing revealed primary diagnoses of thyrotoxicosis secondary to Graves Disease and severe weight loss secondary to Graves

Disease. Secondary diagnoses were bipolar disorder, urinary tract infection, and fracture of both wrists, status post prosthesis. Claimant improved with treatment and was discharged on November 17, 2008. Department Exhibit A, pgs 52-94.

14. On or about January 7, 2009, claimant was admitted to hospital complaining of severe chest pain. Physical examination revealed t thyrotoxicosis, bipolar disorder and depression, urinary tract infection, chronic pain syndrome wrists elbows, hypertension, chiari malformation. Claimant denied drug use, but tested positive for opiates and benzodiazepines. Claimant improved with treatment and was discharged on or about January 9, 2009. Department Exhibit A, pgs 7-49.
15. October 23, 2008, claimant's physician completed a Medical Examination Report (DHS-49) following physical exam that took place that same day. Doctor indicates current diagnoses of opioid withdrawal, bipolar depression, urinary tract infection, syncope, chest pain, status post nonsustained supra ventricular tachycardia, two other diagnoses are listed but not legible. Physical exam was within normal limits with the exception of nonsustained supra ventricular tachycardia and multiple wrist fractures. Doctor indicates claimant's condition is stable. He is able to occasionally lift 50 pounds or more. He is able to sit less than six hours in an eight-hour workday. He is able to perform a full range of repetitive actions with both extremities. He is able to perform full range of motion with both lower extremities. Doctor notes no mental limitation. Department Exhibit A, pgs 95-96.

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 been diagnosed with substance abuse, bipolar disorder, and depression. He was hospitalized several times during October 2008 through January 2009 due to these conditions. Claimant has also been diagnosed with Graves Disease. Physical exam revealed claimant has reduced range of motion in his elbows and they are somewhat swollen. Neither hand is able to flatten fully when placed on a plane. Claimant has some impairment in heel walking. He is able to partially squat. Finding of Fact 10-15.

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 roofer. See discussion at Step 2 above. Finding of Fact 9-15. The condition of claimant's elbows and wrists would appear to make it difficult for him to perform the duties required by his past relevant employment as a roofer.

At Step 4, the objective medical evidence of record is 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 not 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. Therefore, 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.

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.

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 1, 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.

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