

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: 2009-3591
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 18, 2009
Presque Isle 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, a telephone hearing was held on February 18, 2009.

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) On May 28, 2008, claimant applied for retroactive MA, MA and SDA. He submitted medical records for department consideration.

(2) October 15, 2008, the Medical Review Team (MRT) denied claimant's application. Department Exhibit A.

(3) October 21, 2008, the department sent claimant written notice that his application was denied.

(4) October 27, 2008, the department received claimant's timely request for hearing.

(5) November 12, 2008, the State Hearing Review Team (SHRT) denied claimant's application. Department Exhibit B.

(6) February 18, 2009, the telephone hearing was held.

(7) Claimant asserts disability based on impairments caused by schizophrenia, neuralgia and stress.

(8) Claimant testified at hearing. Claimant is 42 years old, 5'7" tall, and weighs 180 pounds. Claimant completed the 12th grade. Claimant is able to read, write, and perform basic math but has difficulty. Claimant has a driver's license but does not drive. Claimant cares for his needs at home.

(9) Claimant's past relevant employment has been in sales and as a waiter and cashier.

(10) August 1, 2005, claimant underwent a facial CT scan and a report was prepared that states the following impression: comminuted fracture posterior wall left maxillary sinus and lamina papyracea; possible non displaced fracture left orbital root; there is also noted to be mild thickening along the left optic nerve immediately posterior to the globe where there may be a small hematoma. Department Exhibit A, pgs 41-43. July 10, 2007, claimant's vision specialist wrote a letter to his family physician that states claimant has visual acuity of 20/20 in each eye. Motility appeared normal and there was no enophthalmos. Claimant did have some left cheek hypesthesia. Doctor is unsure of the etiology of the orbital pain, but opines it may be a type of trigeminal neuralgia. Department Exhibit A, pg 34.

(11) March 9, 2007, claimant was examined by his family physician and treatment notes were prepared. Doctor indicates that neurological exam is grossly normal with no focal or lateralizing signs. Cranial nerves 2-12 are intact. Claimant is alert and oriented to time, place and person. Behavior is agitated. Language is comprehensible. Problems or defects are noted in affect or mood, insight, and judgment. Doctor's assessment includes generalized anxiety, panic disorder with agoraphobia, dysfunctional head, somatization disorder, otalgia unspecified, entrapment syndrome, and neuropathy. Differential diagnoses includes anxiety, panic disorder, bipolar disorder, and drug abuse. Department Exhibit A, pgs 46-47.

(12) September 19, 2008 claimant underwent an independent physical examination and a report was prepared. Physical exam revealed visual acuity without corrective lenses of 20/30 in right eye and 20/30 left eye. Claimant could hear conversational speech without limitation or aids. Neck was supple without apparent masses. Breath sounds were clear to auscultation and symmetrical. There was no accessory muscle use. Heart had regular rate and rhythm without enlargement. There was a normal S1 and S2. There was no apparent organomegaly or masses. No clubbing, cyanosis or edema was detected. Peripheral pulses were intact. There was no evidence of joint laxity, crepitation or effusion. Grip strength remains intact. Dexterity was unimpaired and claimant could pick up a coin, button clothing, and open a door. Claimant had no difficulty getting on and off exam table, no difficulty heel and toe walking, no difficulties squatting and arising, and no difficulty hopping. Range of motion in all joints was full. Cranial nerves were intact. Motor strength as 5/5 and tone was normal. Sensory appeared intact to light touch. Reflexes were 2+ and symmetrical. Plantar responses were flexor. Romberg testing was negative. Tandem walk was normal. Claimant walked with a normal gait without the use of

assistive device. Straight leg raise was accomplished to 80 degrees on the right and 80 degrees on the left. Department Exhibit A, pgs 5-6.

(13) October 3, 2008, claimant underwent a psychiatric examination. A narrative report was prepared. Axis I diagnoses are anxiety disorder and cognitive disorder. Claimant is in contact with reality. Self esteem was fair. Motor activity is marked by frequent movements and fidgeting. Claimant is tense but cooperative. Stream of mental activity was spontaneous but not well organized. At times he could not be understood and he rambled and was digressive. Claimant denies any hallucinations, delusions, or psychotic trend or thought. Claimant denies any suicidal ideation or crying spells. He denies feelings of worthlessness. Claimant appeared anxious but friendly and labile, with bland affect. Memory, fund of information, calculation, abstract thinking, and judgment appear to have been in normal limits. GAF was assessed at 45. Department Exhibit A, pgs 8-13.

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 had an injury to his eye and face in 2005. Recent physical examination and testing indicates that claimant has visual acuity bilaterally of at least 20/30 without corrective lenses. Pupils are equal, round and reactive to light. Cranial nerves are intact. Finding of Fact (FOF) 10, 11, 12.

At Step 2, on October 3, 2008, psychiatric exam revealed that claimant was oriented x 3 with spontaneous, but not well organized stream of mental activity. He was anxious but friendly and labile with bland affect. Memory, information, calculations, abstract thinking, and judgment appear to be within normal limits. Axis I diagnoses were anxiety disorder and cognitive disorder with GAF assessed at 45. GAF of 45 indicates serious symptoms or serious impairment in one of the following: social, occupational, or school functioning. At hearing, claimant testified that he was diagnosed with schizophrenia and had "stress" conditions. The objective medical evidence of record does not indicate a diagnosis of schizophrenia, nor does the information indicate what stress conditions claimant may be under. FOF 10-13; Department A.

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 in sales and as a waiter and cashier. The objective medical evidence of record indicates that claimant has anxiety disorder and cognitive disorder. The objective medical evidence indicates cognitive dysfunction as early as March 2007. In 2008, claimant had agitated motor activity. Stream of mental activity was not well-organized; claimant rambled and was digressive. GAF was 45, indicative of serious impairment. FOF 11, 13; DSM IV, 1999.

At Step 4, the objective medical evidence of record is sufficient to establish that claimant has cognitive impairments that prevent claimant, for a period of 12 months or more, from engaging in a full range of duties required by his 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, the objective medical evidence of record establishes that claimant has a cognitive impairment. See discussion at Step 2 and 4, above. FOF 10-13.

At Step 5, the objective medical evidence of record is sufficient to establish that claimant is not capable of performing work activities due to non-exertional cognitive impairment.

Accordingly, claimant is not disqualified at Step 5.

Claimant meets the federal statutory requirements for disability and so also meets the Medical Assistance requirements for disability.

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).

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 4 and 5 above, the Administrative Law Judge decides that claimant has cognitive impairments that prevent work for 90 days or more. Therefore, claimant meets the disability requirements for SDA.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides claimant has established disability for Medical Assistance and State Disability Assistance.

Accordingly, the department's action is, **HEREBY, REVERSED**. The department is to initiate a determination of claimant's financial eligibility for MA and SDA. If otherwise eligible, medical review is set for September 2010.

Claimant shall seek and fully participate in mental health treatment. He shall provide treatment records at review. Failure to do so may affect future eligibility.

/s/

Jana A. Bachman
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: October 5, 2009

Date Mailed: October 5, 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 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:

