

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: 2009-3712
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 18, 2009
Wayne 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 three-way telephone hearing was held on March 18, 2009. Claimant personally appeared and testified from his home along with his aunt [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 March 31, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On September 16, 2008, the Medical Review Team denied claimant's application stating that claimant had a non-exertional impairment that does not prevent employment.

(3) On September 22, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On September 30, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On November 17, 2008, the State Hearing Review Team again denied claimant's application stating he was capable of performing other work, namely unskilled work per 20 CFR 416.968(a).

(6) Claimant indicated at the hearing that he had additional medical information (psychiatric reports, school records and possible hospital records), and agreed to the extension of the record until June 18, 2009, to provide these records for review.

(7) On June 9, 2009, Wayne County caseworker informed the Administrative Law Judge that she had not received any medical information from the claimant, but that she did leave a message for the claimant and his aunt to contact her as soon as possible.

(8) As of August 24, 2009, no additional medical information has been received for the claimant, and record was closed on this date.

(9) Claimant is a 21 year-old man whose birthday is [REDACTED]. Claimant is 5' 11" tall and weighs 170 after losing 40-45 pounds due to eating better. Claimant attended the 11th grade and does not have a GED. Claimant is not able to read or write well as he can read simple words and his spelling is bad, but does have basic math skills.

(10) Claimant worked when he was 16 years-old for a pizza business in Florida for 5 months but quit because they were not paying him "right". Claimant also worked for [REDACTED]

█ in Florida in 2004 or 2005 for 2 days but stopped going to work because he was not feeling well.

(11) Claimant lives with his aunt, brother and 2 cousins and has no income. Claimant does not drive and never tried to get a driver's license. Claimant watches TV, plays games on play station, and uses computer 3-4 hours per day looking up things.

(12) Claimant alleges as disabling impairments schizophrenia and bipolar disorder.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be

expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments does not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to

perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant is not engaged in substantial gainful activity and testified that he has not worked since year 2005. Claimant is not disqualified from receiving disability at Step 1.

At Step 2, claimant has the burden of proof of establishing that he has a severely restrictive physical or mental impairment that has lasted or is expected to last for duration of at least 12 months.

The objective medical evidence on the record consists of the Mental Residual Functional Capacity Assessment of December, 2007, indicating that claimant is markedly limited in understanding and memory, sustained concentration and persistence, social interaction and adaption. Same psychologist completed a Medical Needs form diagnosing the claimant with schizophrenia/bipolar and indicating that he needs assistance with taking medications, meal preparation and shopping, and that he can never work.

Medical Examination Report of December 10, 2007, shows that all of claimant's examination areas are normal except for mental where he is slightly slowed, that claimant's condition is stable, that he has no physical limitations but is limited mentally in comprehension, sustained concentration and social interaction. Claimant can meet his needs in the home without assistance.

An evaluation of the claimant was done by [REDACTED], on August 16, 2008. Claimant came to his appointment accompanied by his aunt and stated that he used to see a therapist once per month, but has not seen one in the last year due to lack of insurance and transportation. Claimant reported having significant depression with a bad temper. Claimant also reported having trouble in school and that he made a suicidal attempt at school where he put scissors on his throat. Claimant stated he had been hospitalized twice and the last time was in January, 2006 after he expressed thoughts about overdosing on medication. Claimant was causally dressed and his hygiene and grooming were fair. Claimant was in contact with reality, has low self-esteem, some psychomotor retardation was present, he seemed

motivated to get better, and has insight into his problems. Claimant's stream of mental activity was spontaneous, logical and goal-directed, and no loose associations or flight of ideas were noted. Claimant admitted having paranoid thoughts about people following him and trying to hurt him, but denied any auditory or visual hallucinations. Claimant became tearful when talking about his mother's death about one year ago. Claimant was oriented to person, place and time. Diagnoses were that of bipolar disorder depressed type with psychotic features, rule out schizoaffective disorder depressed type and major depressive disorder recurrent with psychotic features. Claimant had no major medical problems, and had GAF of 40 with inability to manage funds.

Social Summary completed by DHS Medical Contact Worker on June 17, 2008, quotes the claimant as saying he has difficulty being around people, has anxiety attacks frequently that cause him to lose the use of his legs and body shakes on occasion and this may last several hours. Claimant was observed to be nervous and tense, but his grooming was neat and he denied any use of alcohol or drugs.

Medical evidence establishes that the claimant does not have any physical impairments. There is some evidence in the record that claimant suffers a mental impairment, namely Medical Needs form with a diagnosis of schizophrenia completed by a psychologist in December, 2007. It is unknown how long this psychologist saw the claimant for prior to December, 2007 and how she concluded that he suffers from schizophrenia. August, 2008 independent psychological evaluation states that the claimant's diagnosis is bipolar disorder and does not describe any severe disturbances in claimant's mental activity, behavior, mental capacity, etc., exhibited during the exam. Despite being given from March, 2009, date of the hearing, to the end of August, 2009, to provide additional information regarding any past hospitalization and other

medical records that hearing testimony indicated existed, claimant and his aunt who was present at the hearing failed to do so. Claimant testified that he watches TV, plays games on the play station by himself, and uses a computer 3-4 hours per day looking up things, activities which show that he is able to engage in and understand instructions to operate such machines. This Administrative Law Judge finds that the medical record combined with claimant's own hearing testimony about his mental condition is insufficient to establish that claimant has a severely restrictive mental impairment.

Therefore, evidentiary record is insufficient to find claimant suffers a severely restrictive physical and/or 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, while minimal, was doing simple labor jobs delivering pizza. Finding that the claimant is unable to perform work which he has engaged in in the past cannot therefore be reached and the claimant is denied from receiving disability at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform other jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

Claimant has submitted insufficient objective medical evidence that he lacks the residual functional capacity to perform tasks from his prior employment, or that he is physically unable to do at least medium work if demanded of him. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity to perform other work. Claimant is disqualified from receiving disability at Step 5 based upon the fact that he has not established by objective medical evidence that he cannot perform light, sedentary and medium work, or possibly even heavy work. Under the Medical-Vocational guidelines, a younger individual (claimant is age 21), with limited education and an unskilled work history who can perform medium work is not considered disabled pursuant to Medical-Vocational Rule 203.25.

The claimant has not presented the required competent, material, and substantial evidence which would support a finding that the claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). Although the claimant has cited medical problems, the clinical documentation submitted by the claimant is not sufficient to establish a finding that the claimant is disabled. There is no objective medical evidence to substantiate the claimant's claim that the

alleged impairment(s) are severe enough to reach the criteria and definition of disabled. The claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. PEM, Item 261, page 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of light, sedentary and medium work even with his alleged impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED, and it is SO ORDERED.

/s/ _____
Ivona Rairigh
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: September 10, 2009

Date Mailed: September 16, 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.

IR [REDACTED]

cc: [REDACTED]