

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: 2009-6799
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 31, 2009
Ingham County DHS

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

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 hearing was held on March 31, 2009. Claimant appeared and testified.

ISSUE

Did the Department of Human Services properly deny Claimant's application for Medical Assistance (MA) based on disability?

FINDINGS OF FACT

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

(1) Claimant is a 30 year-old male. Claimant is 5' 9" tall and weighs approximately 303 pounds. Claimant's formal education consists of 12 years of school resulting in a high school diploma.

(2) Claimant has past relevant work in janitorial services, shipping and receiving, fast food, and light unskilled industrial jobs.

(3) Claimant last worked in 2008 doing janitorial services and shipping and receiving activities. Claimant was employed at the job for eight years. Claimant reports he was fired over an inappropriate comment to another employee.

(4) On July 10, 2008, Claimant applied for Medical Assistance (MA) based on disability.

(5) On October 27, 2008, the Department of Human Services Medical Review Team determined that Claimant was not disabled.

(6) On October 29, 2008, Claimant was sent notice of the Department's determination.

(7) On November 17, 2008, Claimant submitted a request for hearing.

(8) On January 5, 2009, the Department of Human Services State Hearing Review Team determined that Claimant was not disabled.

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).

Disability determinations done by the State of Michigan for Medical Assistance (MA) based on disability use the Social Security Administration standards found in United States Code of Federal Regulations (CFR) at Title 20, Part 416. The law defines disability 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 at least 12 months. To meet this definition, you must have severe impairments that make you unable to do your past relevant work or any other substantial gainful work that exists in the national economy.

Disability determinations done by the State of Michigan, for State Disability Assistance (SDA), use the same standards with one minor difference. For State Disability Assistance (SDA) the medically determinable physical or mental impairments that prevent substantial gainful activity must result in death or last at least 90 days.

In accordance with the Federal Regulations an initial disability determination is a sequential evaluation process. The evaluation consists of five steps that are followed in a set order.

STEP 1

At this step, a determination is made on whether Claimant's is engaging in substantial gainful activity (20 CFR 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. Substantial work activity is work activity that

involves doing significant physical or mental activities. Gainful work activity is work activity that you do for pay or profit (20 CFR 416.972). If you are engaged in SGA, you are not disabled regardless of how severe your physical or mental impairments are and regardless of your age, education, and work experience.

Claimant is currently seeking employment but is not actually employed. Claimant testified that he spends a majority of his time watching TV, playing video games, and on line at the local library doing research and looking for work. Claimant is not engaged in any substantial gainful activity. Claimant is not considered ineligible at this step.

STEP 2

At the second step, it is determined whether you have a medically determined impairment that is severe or a combination of impairments that is severe (20CFR 416.920(c)). 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 establishes 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 416.921). If your medically determinable impairments are not severe you are not disabled.

Claimant asserts disability based upon psychological issues. Claimant reports he has had psychological issues all his life and has been diagnosed with both Bipolar Disorder and Asperger's Disorder. Claimant reported he recently lost his job at [REDACTED] after eight years due to an inappropriate comment to a co-worker. Claimant reported he has lost many other jobs due to his interaction with co-workers. Relevant evidence in the record from medical sources includes a psychological evaluation done by [REDACTED] on

[REDACTED] and a psychological evaluation done by [REDACTED] on [REDACTED]

Claimant's Axis I diagnosis at [REDACTED] was Bipolar Disorder and Attention Deficit Hyperactivity Disorder. At the time of the evaluation Claimant reported he had previously been prescribed medication that calmed him down and helped his focus and concentration. Claimant was not taking medication at the time of the evaluation.

Claimant's Axis I diagnosis at [REDACTED] was Asperger's Disorder, Attention Deficit Hyperactivity Disorder, and Depressive Disorder. At the time of the evaluation Claimant reported he had previously been prescribed medication that calmed him down and helped his focus and concentration. Claimant was not taking medication at the time of the evaluation. Their recommendations included: counseling to identify a realistic vocational plan; vocational training or college; treatment for Attention Deficit Hyperactivity Disorder in order to assist in training and maintaining employment; referral to a support group for developing social coping strategies; and employment that entails minimal social interactions.

The two evaluations do not indicate that Claimant's mental impairments are severe. The Federal Regulations at 20 CFR 416.921 give a description of a non-severe impairment.

(a) *Non-severe impairment(s)*. An impairment or combination of impairments is not severe if it does not significantly limit your physical or mental ability to do basic work activities.

(b) *Basic work activities*. When we talk about basic work activities, we mean 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.

While Claimant's psychological evaluations indicate Claimant has some mental limitations, the Federal Regulation's clearly state the impairments must "significantly" limit the ability to do basic work activities. [REDACTED] concluded that Claimant does not meet the diagnostic criteria for bipolar disorder. They also concluded that Claimant has symptoms of attention deficit disorder which is secondary to a diagnosis of pervasive development disorder more specifically Asperger's disorder. Based on Claimant's eight straight years of employment at [REDACTED] they concluded that he was motivated to be employed, was most likely a dedicated employee, "however his impaired social skills resulted in his termination." Claimant reported he has lost many other jobs due to his interaction with co-workers. During the evaluation by [REDACTED] Claimant reported three specific incidents for which he alleges he was discharged. None of the instances rise above Claimant being insensitive to the feelings of others. There is no evidence whatsoever in the record that Claimant's ability to focus or concentrate has caused him to lose any employment.

The evidence in this case does not show that Claimant's mental impairments are medically severe. Claimant is considered ineligible at this step. The Federal Regulations do not require further analysis if a Claimant can be determined disabled or not disabled at a step in the process. In spite of this, all five steps of the analysis will be done.

STEP 3

At the third step, it is determined whether your impairments meet or equal the criteria of an impairment listed in a Social Security Administration impairment listing 20 CFR Part 404,

Subpart P, Appendix 1. If your impairment meets or equals the criteria of a listing and meets the duration requirement, you are disabled.

Claimant's mental impairments were compared with the Social Security Administration impairment listings 12.04 Affective Disorders and 12.10 Autistic disorder and other pervasive developmental disorders. Claimant's mental impairments did not meet or equal those listing.

STEP 4

At the fourth step, we assess your residual functional capacity (RFC) to determine if you are still able to perform work you have done in the past. Your RFC is your ability to do physical and mental work activities on a sustained basis despite limitations from your impairments. Your RFC is assessed using all the relevant evidence in the record. If you can still do your past relevant work you are not disabled under these standards.

Claimant reports past relevant work doing janitorial and shipping and receiving at one employer for eight years. Claimant reports that he lost that employment due to an inappropriate comment to a co-worker. At this hearing Claimant did not specifically assert he cannot work. Claimant stated he is still seeking work although he is not sure what kind of work he can do because of his social problems. The evidence in the record shows that Claimant is capable of performing his past relevant work.

STEP 5

At the fifth step, your residual functional capacity (RFC) is considered along with your age, education, and work experience to see if you can make an adjustment to other work you have not previously done. If you have a combination of sufficient remaining abilities and transferable skills to adjust to other work, you are not disabled.

Claimant is 30 years-old, has a high school education, unskilled work history, no physical impairments, and impaired social skills. In accordance with the Social Security Administration Medical-Vocational Guidelines Claimant is not disabled.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services properly denied Claimant's application for Medical Assistance (MA) based on disability.

It is ORDERED that the actions of the Department of Human Services, in this matter, are UPHELD.

/s/ _____
Gary F. Heisler
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: August 10, 2009

Date Mailed: August 11, 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.

GFH/ [REDACTED]

cc:

[REDACTED]