

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: 2010-1074
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 19, 2009
Montmorency 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 November 19, 2009. Claimant personally appeared and testified. Also appearing and testifying on claimant's behalf was [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 16, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On July 30, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

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

(4) On August 3, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On October 13, 2009, the State Hearing Review Team (SHRT) again denied claimant's application stating that he retains the capacity to perform a wide range of simple, unskilled, medium work. SHRT used Vocational Rule 203.28 as a guide.

(6) Claimant presented additional medical information following the hearing that was forwarded to SHRT for review. On December 8, 2009 SHRT once again determined that the claimant was not disabled, for the same reasons stated in the October 13, 2009 decision.

(7) Claimant is a 38 year old man whose birthday is November 19, 1971. Claimant is 5'7" tall and weighs 240 lbs., and claims he gained 20 lbs. due to nerves. Claimant completed 12th grade but was in special education all throughout school. Claimant cannot read and write very well but can do basic math.

(8) Claimant states that he last worked in 2005 in carnival work (running rides) traveling around the country, job he did since 2001. Claimant also worked at a saw mill for 1 month in 2004 making pallets, until he was hurt smashing his finger. Claimant states no one will hire him now.

(9) Claimant currently lives in a cabin on his mother's land and only pays a light bill, and states his family has been helping him financially. Claimant does not have a driver's license due to repeated drunk driving offenses, last one being in 2007. Claimant cooks for himself and grocery shops when a family member takes him, mows the lawn, and goes fishing and hunting when friends take him.

(10) Claimant alleges as disabling impairments back pain from pinched nerves in his back from a car accident in 2005, arthritis, breathing problems-asthma, and mental health problems.

(11) Claimant has applied for Social Security disability in 2008 and been denied, and is appealing the denial.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (RFT).

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (RFT).

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, that being a five-step sequential evaluation process for determining whether an individual is disabled (20 CFR 404.1520(a) and 416.920(a)). The steps are followed in order. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If it is determined that the claimant is or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.

At step one, the Administrative Law Judge must determine whether the claimant is engaging in substantial gainful activity (20 CFR 404.1520(b) and 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 (20 CFR 404.1572(a) and 416.972(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized (20 CFR 404.1572(b) and 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that he/she has demonstrated the ability to engage in SGA (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, he/she is not disabled regardless of how severe his/her physical or mental impairments are and

regardless of his/her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the Administrative Law Judge must determine whether the claimant has a medically determinable impairment that is “severe” or a combination of impairments that is “severe” (20 CFR 404.1520(c) and 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 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). If the claimant does not have a severe medically determinable impairment or combination of impairments, he/she is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

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). 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).

At step three, the Administrative Law Judge must determine whether the claimant's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the claimant's impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement (20 CFR 404.1509 and 416.909), the claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine the claimant's residual functional capacity (20 CFR 404.1520(e) and 416.920(e)). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of the claimant's impairments, including impairments that are not severe, must be considered (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, the Administrative Law Judge must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his/her past relevant work (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as the claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the claimant to learn to do the job and have been SGA

(20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If the claimant has the residual functional capacity to do his/her past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g), the Administrative Law Judge must determine whether the claimant is able to do any other work considering his/her residual functional capacity, age, education, and work experience. If the claimant is able to do other work, he/she is not disabled. If the claimant is not able to do other work and meets the duration requirements, he/she is disabled.

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).

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, in considering the claimant's symptoms, whether there is an underlying medically determinable physical or mental impairment(s)-i.e., an impairment(s) that can be shown by medically acceptable clinical and laboratory diagnostic techniques-that could reasonably be expected to produce the claimant's pain or other symptoms must be determined. Once an underlying physical or mental impairment(s) has been shown, the Administrative Law Judge must evaluate the intensity, persistence, and limiting effects of the claimant's symptoms to determine the extent to which they limit the claimant's ability to do basic work activities. For this purpose, whenever statements about the intensity, persistence, or functionally limiting

effects of pain or other symptoms are not substantiated by objective medical evidence, a finding on the credibility of the statements based on a consideration of the entire case record must be made.

The objective medical evidence on the record includes a Psychiatric Service Report, [REDACTED], from [REDACTED]. Claimant weighed 234 lbs. and generally looked healthy, just from observation. Claimant's gait was slow but normal, and he had no noticeable neurological deficits. Claimant's chief complaint was that he wanted to be able to "handle people better". Claimant denied any inpatient psychiatric hospitalizations, but outpatient treatment had taken place when he was in his teens and twenties, when he was interviewed while in jail. Claimant had also been seen by [REDACTED] (who was present at the hearing) for intake on March 12, 2009 and diagnosed with major depressive disorder, alcohol dependence and a GAF of 36.

Claimant's current medications came from his primary care provider, and he was on psychotropics. Claimant stated that he smokes about half a pack of cigarettes a day, but he quit drinking after doing so heavily over the course of four years, consuming almost a case of beer on a daily basis. Mental status examination indicates that the claimant was alert, fully oriented and cooperative, and capable of fluent speech but there was poverty of ideas and content of speech. Claimant spoke in a very low voice and sometimes answered in monotones. Claimant did have some degree of psychomotor retardation but no psychomotor agitation. There was no suicidal intent, pressure of speech, flight of ideas, expansiveness or grandiosity. Claimant did report some auditory hallucinations occurring primarily in the daytime, hearing a girl's voice telling him he is no good. Claimant did come across as intellectually limited. Claimant's diagnosis is

that of panic disorder with agoraphobia, dysthymic disorder, history of alcohol and marijuana abuse, dependent personality, possible mental retardation, and a GAF of 46.

[REDACTED] exam report of [REDACTED] quotes as claimant's chief complaint asthma, and status post motor vehicle accident. Claimant stated he has had shortness of breath for the last 18 months, and can walk about one mile before he gets winded and fatigued. Claimant was also involved in a motor vehicle accident in 2007, when he hit a pole head-on and sustained internal injuries, was in ICU for three days but did not undergo any surgical intervention. Claimant underwent physical therapy for two days afterwards and has not had any treatment since. Claimant reported spending his time playing video games, watching television, going to AA meetings and going to church. Claimant stated he can lift about 20 pounds, stand about 90 minutes, has no problems sitting, and can walk about one mile. Conclusion of the physical exam is that of status post motor vehicle accident, and while the claimant did complain of some associated back pain by history there was no significant degeneration today. Claimant's range of motion was relatively well preserved, he had minimal difficulty doing orthopedic maneuvers and his gait was stable. At this point, much of his symptoms appear to be related to his current mental affect. As far as shortness of breath, claimant does appear to have mild persistent disease but his endurance appears stable, and he did not appear hypoxic. Claimant's main issue does appear to be his current mental status, and a history of alcoholism is noted.

[REDACTED] individual therapy visit report quotes the claimant as saying he relapsed in his drinking and "it felt good". Claimant justified his alcohol usage by saying after drinking his blood pressure was normal, and could not commit to stop

drinking. Claimant reported getting drunk with his friends at his house, and stated he would only drink at home so he does not get in trouble with the law again.

Claimant's IQ testing on WAIS-R in 12th grade at age 17 showed a verbal IQ of 73, performance IQ of 70 and full scale IQ of 71.

March 27, 2009 Medical Examination Report from claimant's treating physician indicates as his current diagnosis low back pain and radiculopathy, and cognitive impairment/depression. All of claimant's examination areas are marked as normal except for mental, citing flat affect and depressed mood. Claimant's condition is stable, he can lift/carry 25 lbs. frequently and 50 lbs. or more occasionally, and he can stand/walk and or sit about 6 hours in an 8-hour workday. Claimant has mental limitations in comprehension, memory, sustained concentration, following simple directions, reading/writing, and social interaction. Claimant can meet his needs in the home without assistance.

Additional information presented following the hearing is a Mental Status Examination of November 6, 2009. Claimant's complaints and symptoms now involved multiple medical problems, a bipolar disorder, a social anxiety disorder and mild mental retardation. Claimant walked slowly, but without obvious impairment, his facial expression was alert, but mildly anxious, tense and depressed. Claimant showed adequate contact with reality. His self-esteem was poor, and he showed poor insight into his status. Claimant's stream of mental activity was moderately passive, he slowly responded to questions, and his responses were generally reasonable. Claimant stated he hears a voice inside his head talk to him, but that the medication has reduced the amount of such hearing. No delusional ideation was noted during this evaluation, and claimant denied any suicidal thoughts. Claimant's mood during the evaluation was mildly depressed, and he also appeared to be mildly anxious and tense.

Psychological tests, WAIS-IV and WRAT-4, were given. On the WAIS-IV test claimant achieved a Verbal Comprehension Index of 66, a Perceptual Reasoning Index of 69, a Working Memory Index of 63, a Processing Speed Index of 68, a Full Scale IQ of 61 and a General Ability Index of 64. All of these scores place him in the Mild Mental Retardation range of abilities. WRAT-4 scores also place the claimant in the Mild Mental Retardation range.

Examiner's conclusion is that the claimant has serious cognitive and memory deficits, and that he cannot effectively read, write or do math. Along with these low cognitive skills he also appears to have serious attentional and concentration deficits, as during the evaluation even simple instructions had to be repeated to him. All three of claimant's psychoactive medications (Haldol, Ativan and Trazodone) are very sedating and will aggravate the attentional and concentration deficits. These low cognitive skills are consistent with a person who spent his entire education in special education programming.

Medical evidence has clearly established that claimant has an impairment (or combination of impairments) that has more than a minimal effect on claimant's work activities. See Social Security Rulings 85-28, 88-13, and 82-63. This impairment has lasted 12 months or more. Analysis therefore continues to Step 3.

At Step 3 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 support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. Mental Status Examination of November, 2009 persuasively shows that the claimant meets the criteria listed in Listed Impairment 12.05(C) Accordingly, claimant can be found to be disabled based upon

medical evidence alone. 20 CFR 416.920(d). No further analysis is needed. The claimant is disabled for the purposes of the Medical Assistance disability (MA-P) program.

The department's Bridges 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. BEM, Item 261, page 1. Because the claimant does meet the definition of disabled under the MA-P program and because the evidence of record does establish that claimant is unable to work for a period exceeding 90 days, the claimant meets the disability criteria for State Disability Assistance benefits also.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department erred in determining that the claimant is not disabled for MA and SDA eligibility purpose.

Accordingly, the department's decision is REVERSED. Department shall:

1. Process claimant's disputed March 16, 2009 MA and SDA application and award him any such benefits he is otherwise found eligible for (i.e. meets financial and non-financial eligibility criteria).
2. Notify the claimant of this determination.
3. Review claimant's ongoing eligibility in September, 2011, at which time updated medical records are to be obtained.

SO ORDERED.

/s/

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

Date Signed: August 10, 2010

Date Mailed: August 10, 2010

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/tg

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