

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: 2010-5227
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 26, 2010
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

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 January 26, 2010. Claimant personally appeared and testified.

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 May 11, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On August 14, 2009, the Medical Review Team denied claimant's application stating that claimant's impairments were nonexertional.

(3) On August 18, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On September 17, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On November 12, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: There is no evidence of any physical limitations. Related to alleged psychiatric condition, there is evidence of a significant but not disabling condition. Despite noted limitations by treating psychiatric doctor, the claimant's activities form does not detail the same level of incapacity. The claimant retains the ability to do simple and repetitive tasks with no physical limitations. The claimant's past relevant work is described as medium skilled. As such, the claimant would be unable to perform the duties associated with her past relevant tasks at this time. Using Vocational Rule 204.00 as a guide, the claimant would retain the ability to perform simple repetitive tasks. Listing 3.02, 4.04, 5.01 and 12.03 were considered in this determination.

(6) Claimant is a 46-year-old man whose birth date is [REDACTED] Claimant is 5' 11" tall and weighs 160 pounds. Claimant attended the 10th grade and does have a GED. Claimant is able to read and write and can add, subtract and count money.

(10) Claimant last worked in 2008 as a [REDACTED] truck driver. Claimant has also worked as a truck driver for five years and as a driver of a [REDACTED]

(11) Claimant alleges as disabling impairments: insomnia, nasal polyps, hypertension, gastroesophageal reflux disease, asthma and schizophrenia, as well as panic attacks and allergies.

CONCLUSIONS OF LAW

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 (PRM).

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 (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).

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 has not worked since 2008. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a psychiatric report, dated July 15, 2009, indicates that claimant came to the appointment by himself. He was seen wearing a grey suit. He has very poor eye contact. His hygiene and grooming are fair. The eyes were observed to be red and congested. He was observed to be playing with his fingers, being nervous in the interview. He has some trouble remembering things. He was punctual to the appointment. The patient did not need any assistance in preparing for the appointment. He is in limited contact with reality. He has low self-esteem. Psychomotor retardation was noted. He seemed to be nervous. He does not seem to be motivated to get better. There is no tendency to exaggerate symptoms. He has some insight into his problems. He was spontaneous but somewhat illogical and not goal-directed at times. Claimant admitted to hearing voices, telling him not to turn off the lights and to keep garlic to keep the demons away, etc. He feels paranoid and that people are out there to get him. The patient described his mood as being depressed. The affect was constricted. The patient stated that today was June 15, 2009, instead of July 15, 2009. He was oriented to place and person. With memory, he was able to repeat three digits forward and three digits backward immediately. He was able to recall 3/3 items immediately, after 3 minutes 2/3

items. When asked to name the past three presidents, he said “Obama.” When asked his date of birth, he said, “December 18, 1963.” When asked to name five large cities and current famous people, he said he could not think of it. When asked to do serial 7’s, he said 89, 83. He is unable to multiply simple digits. When asked about the grass is greener on the other side of the fence, he stated, “just looks green.” When asked about what is common between a bush and a tree, he said, “both have leaves.” When asked about what he would do if he found a stamped, addressed envelope, he said he would “put it in the mailbox.” He denied any head injury or seizures. His GAF was 25 and guarded and he would not be able to manage his own funds. A medical source statement indicates that the claimant is able to understand, retain and follow simple instructions and generally needs restrictions to perform a simple routine with repetitive concrete tasks. Due to his psychosis associated with depression and psychomotor retardation, he is restricted to work that involves brief and superficial interactions with co-workers, supervisors and the public. The claimant is subject to relapses and the pressure of employment could be a major factor that would result in decompensation on his part. He is diagnosed with schizophrenia. (Page 8-10).

A Medical Examination Report, dated April 22, 2009, indicates that claimant can occasionally lift less than 10 pounds, but never lift 10 pounds or more. He can stand or walk about 6 hours in an 8-hour day and sit less than 6 hours in an 8-hour day. He did not need assistive devices for ambulation. He could use his upper extremities for simple grasping, reaching, pushing and pulling, and fine manipulating, and could operate foot and leg controls with both feet and legs. He had no mental limitations based upon a general medication determination. (Page 4) He was 5’ 11” tall and weighed 176 pounds, and his blood pressure was 144/96. He had asthma, hypertension, gastroesophageal reflux disease, insomnia, and right obstructive nasal polyps with allergic rhinitis. (Page 13)

A mental residual functional capacity assessment in the record indicates that claimant was moderately limited in most areas and markedly limited only in the ability to understand and remember detailed instructions, the ability to maintain attention and concentration for extended periods, the ability to complete a normal work day and work week without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods, and in the ability to accept instructions and respond appropriately to criticism from supervisors. He was not significantly limited in most areas and only moderately limited in others. (Page 17,18)

The claimant alleges disability secondary to hypertension, asthma, gastroesophageal reflux disorder and schizophrenia. The claimant's treating physician states that the claimant was unable to perform even sedentary tasks. Blood pressure was 144/66 with no evidence of end organ damage. There is no evidence of any physical limitations despite limitations outlined by treating physician. Claimant's activities from psychiatric review related he was unable to perform even unskilled tasks. Additional information from the examiner shows that he would retain the ability to perform simple or repetitive tasks; however, that work places pressure and would lead to significant decompensation in the ability to work. (SHRT Report)(Department Exhibit 26)

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 the duration of at least 12 months.

There is insufficient objective clinical and medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant has reports of pain in multiple areas of his body; however, there are insufficient corresponding clinical findings that support the restrictions and limitations made by the claimant. This Administrative Law Judge

finds that the DHS-49, Medical Examination Report, indicates that the claimant does not list any physical limitations except for his inability to lift. The DHS-49 isn't totally consistent. There is no clinical objective medical information in the file that indicates that claimant cannot do any lifting. There is no clinical impression sited. There are no medical findings that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, the DHS-49 has restricted claimant from tasks associated with occupational functioning based upon claimant's reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that claimant has met the evidentiary burden of proof. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers mental limitations resulting from his reportedly schizophrenic state.

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).

Claimant testified on the record that he can stand for 40 minutes, sit for 2 hours at a time, walk ½ a block, and he is able to squat, bend at the waist, shower and dress himself, tie his shoes and touch his toes. Claimant has no physical pain. He is right-handed and his hand and arms are fine, and his legs and feet are fine. Claimant's back is fine and his knees are fine, and he can carry 10 pounds. Claimant testified that he watches television all day. The mental residual functional capacity assessment in the record indicates that claimant is only markedly limited in a few areas, mostly where he is either not limited or only moderately limited. Claimant was

oriented to time, person and place during the hearing and was able to answer all the questions at the hearing. Claimant was responsive to the questions. 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 medical evidence of claimant's condition does not give rise to a finding that he would meet a statutory listing in the code of federal regulations.

If claimant had not already been denied at Step 2, this Administrative Law Judge would have to deny him again at Step 4 based upon his ability to perform his past relevant work. Claimant's past relevant work was driving a truck or a hi-lo. There is insufficient objective medical evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work which he has engaged in, in the past. Therefore, if claimant had not already been denied at Step 2, he would be denied again 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 some other less strenuous tasks than in his prior 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).

Claimant has submitted insufficient objective medical evidence that he lacks the residual functional capacity to perform some other less strenuous tasks than in his prior employment or that he is physically unable to do light or sedentary tasks if demanded of him. Claimant's activities of daily living do not appear to be very limited and he should be able to perform light or sedentary work even with his impairments. Claimant has failed to provide the necessary objective medical evidence to establish that he has a severe impairment or combination of impairments which prevent him from performing any level of work for a period of 12 months. The claimant's testimony as to his limitations indicates that he should be able to perform light or sedentary work. Under the Medical Vocational guidelines, a younger individual (age 46), with a high school education and an unskilled work history who is limited to light work is not considered disabled.

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.

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