

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: 2010-7812  
Issue No: 2009  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
January 7, 2010  
Oceana 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 January 7, 2010.

ISSUE

Whether claimant has established disability for Medical Assistance (MA).

FINDINGS OF FACT

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

- (1) July 17, 2009, claimant applied for MA and retroactive MA.
- (2) September 28, 2009, the Medical Review Team (MRT) denied claimant's application. Department Exhibit A.

(3) September 29, 2009, the department sent claimant written notice that the application was denied.

(4) October 10, 2009, the department received claimant's timely request for hearing.

(5) December 8, 2009, the State Hearing Review Team (SHRT) denied claimant's application. Department Exhibit B.

(6) January 7, 2010, the telephone hearing was held.

(7) Claimant asserts disability based on impairments caused by agoraphobia, depression, anxiety, carpal tunnel syndrome, herniated discs, lupus, blood clot, diabetes, hypertension, and bad feet.

(8) Claimant testified at hearing. Claimant is 40 years old, 5'9" tall, and weighs 198 pounds. Claimant completed high school and a two year degree in culinary arts. Claimant is able to read, write, and perform basic math. Claimant has a driver's license but is sometimes unable to drive due to anxiety and problems with his feet.

(9) Claimant's past relevant employment has been as a grocery stocker, youth camp counselor and food service provider, and chef.

(10) June 30, 2009, claimant underwent a initial psychological assessment at [REDACTED] and a narrative report was prepared that states an AXIS I diagnoses of panic disorder with agoraphobia and alcohol dependence without physiological dependence in early partial remission. AXIS I diagnoses includes bipolar disorder as well. GAF is assessed at 50. Department Exhibit A, pgs 20-22. In August 2009, claimant's AXIS I diagnoses were changed as follows: panic disorder with agoraphobia, alcohol dependence without psychological dependence early partial remission, and major depressive disorder, recurrent, moderate. GAF was again assessed at 50. Department Exhibit A, pgs 23-25.

August 24, 2009 exam indicates claimant has anxious affect and is moderately dysphoric. He shows a very limited affective range. Mood is anxious. Sits rigidly in chair most likely due to chronic pain and he ambulates very slowly. Eye contact is appropriate and speech is within normal limits. Thought processes are intact. There are no psychotic symptoms and he denies suicidal thoughts. Hygiene and grooming are good. Claimant reports he has been misusing Valium by increasing his dosage without doctor recommendation. Department Exhibit A, pgs 26-27.

(11) December 2, 2008, claimant presented to emergency room (ER) complaining of abdominal pain with vomiting, loss of appetite, type 2 diet controlled diabetes and history of alcoholic drinking for at least 20 years. Claimant underwent physical examination and objective medical testing that revealed claimant to have acute pancreatitis, hyperlipidemia, history of alcohol abuse, and acute pyelonephritis. Claimant improved with treatment and was discharged on December 8, 2008. Department Exhibit A, pgs 201-248.

(12) May 26, 2009, claimant presented to ER complaining of abdominal pain. Objective medical testing revealed claimant to have acute alcoholic pancreatitis; splenic vein thrombosis; superior mesenteric vein thrombosis, and urinary tract infection. Claimant improved with treatment and was discharged on June 8, 2009. Department Exhibit A, pgs 41-43; 48-56; 63-67; 185-189. July 7, 2009, claimant visited his physician and underwent physical examination. A letter prepared regarding that visit indicates that claimant is doing quite well and having only minimal symptoms at this time. Doctor recommends CT scan in one to two weeks that will allow an evaluation of the splenic vein and superior mesenteric venous thrombosis. Doctor also recommended an upper endoscopy due to possible gastric varices. Department Exhibit A, pg 57.

(13) July 13, 2009, claimant underwent MRI of the right shoulder that revealed no evidence of fracture or dislocation. Department Exhibit A, pg 182.

(14) July 1, 2009, claimant visited his physician and underwent physical examination. The treatment notes indicate that claimant has history of lupus anticoagulant. Claimant complains that he is weak and tired but hasn't had any pain in legs consistent with any recurrent clotting. He isn't having abdominal pain and is eating better. His legs feel good. Physical exam revealed claimant generally looks good, lungs are clear, heart has normal S1 and S2, abdomen is soft and benign, and extremities have no edema. Department Exhibit A, pg 40.

September 1, 2008, claimant was again examined by his physician. Treatment notes indicate that claimant complains of severe pain in his feet consistent with peripheral neuropathy. Claimant denied any shortness of breath or chest pain, any nausea, vomiting, diarrhea or constipation. He is having problems with urination and has trouble at times emptying his bladder. Physical exam revealed that claimant in general looks good. Head and neck have no lymphadenopathy. Lungs are clear. Heart has normal S1 and S2. Abdomen is soft with no pain to palpation. Extremities have no edema. Doctor indicates that he suspects claimant's peripheral neuropathy and bladder dysfunction are related to the diabetes. Department Exhibit A, Report, 9-1-09.

#### 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 in December 2008 and May 2009, claimant was hospitalized due to alcoholic pancreatitis. Claimant improved with treatment and was discharged each time after a few days treatment. Claimant also developed deep vein thrombosis, lupus anticoagulant, and pyelonephritis. Claimant is being treated with anticoagulant medications. Subsequent to hospitalization, claimant developed problems emptying his bladder, problems with incontinence, and pain in his feet. Doctor opines this may be related to claimant's diabetes. Finding of Fact 11-14.

At Step 2, the objective medical evidence of record indicates that claimant has anxiety with agoraphobia, alcohol dependence early partial remission, and depressive disorder, recurrent, moderate. Claimant's GAF is assessed at 50, indicative of serious to moderate symptoms. Claimant is being treated with medication and counseling. Finding of Fact 10; DSM IV, 1994 R.

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 to 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 as a grocery stocker, youth camp counselor and food service provider, and chef. See discussion at Step 2 above. Finding of Fact 9-14.

At Step 4, the objective medical evidence of record is not sufficient to establish that claimant has severe functional impairments that prevent claimant for the durational requirement of 12 months or more from engaging in a full range of duties required by claimant's past relevant employment. Therefore, claimant is 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, see discussion at Step 2 above. Finding of Fact 10-14.

At Step 5, the objective medical evidence of record is sufficient to establish that claimant retains the residual functional capacity to perform unskilled light work activities. Considering claimant's Vocational Profile (younger individual, high school graduate or more, and history of skilled/semi-skilled work) and relying on Vocational Rule 202.21, claimant is not disabled. Therefore, claimant is disqualified from receiving disability at Step 5.

Claimant does not meet the federal statutory requirements to qualify for disability. Therefore, claimant does not qualify for Medical Assistance based on disability and the department properly denied claimant's application.

#### DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant has not established disability for Medical Assistance.

Accordingly, the department's action is, hereby, UPHELD.

/s/

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

Date Signed: February 4, 2010

Date Mailed: February 4, 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 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

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