

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 2010-13961
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 17, 2010
Kent 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 February 17, 2010. Claimant personally appeared and testified. Also appearing and testifying on claimant's behalf was his mother [REDACTED] his aunt [REDACTED] L. and his [REDACTED].

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P), retro MA 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 October 14, 2009 claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On November 20, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work per Vocational Rule 201.24, that being sedentary work.

- (3) On November 20, 2009, the department caseworker sent claimant notice that his application was denied.
- (4) On December 8, 2009 claimant filed a request for a hearing to contest the department's negative action.
- (5) On January 8, 2010, the State Hearing Review Team (SHRT) again denied claimant's application stating he retains the capacity to perform a wide range of light exertional, simple and repetitive work. SHRT used Vocational Rule 202.17 as a guide in their decision.
- (6) Claimant presented additional medical information following the hearing that was forwarded to SHRT for review. On February 24, 2010 SHRT once again determined that the claimant was capable of light unskilled work and therefore not disabled.
- (7) Claimant is a 32 year old man whose birthday is June 6, 1978. Claimant is 5'6" tall and weighs 115 lbs. after losing about 25 lbs. due to internal injuries from an accident that make it hard to keep food down. Claimant completed 11th grade and has no GED, but can read, write and do basic math.
- (8) Claimant states that he last worked in 2006 in a restaurant, job he held on and off for 15 years and that ended due to his erratic behavior. Claimant currently lives with his parents and receives food stamps. Claimant has no driver's license due to a DUI offense in 2003, does minimal cooking and housework, and spends his days watching TV, playing video games, and using the computer about 3 hours per day.
- (9) Claimant alleges as disabling impairments: residual effects from a motor vehicle accident in 2009 which resulted in hip and rib fractures and bilateral air in the lungs due to injures, mood and bipolar personality disorder.
- (10) Claimant has applied for Social Security disability and been denied, and is appealing this 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.

using marijuana but denied any use over the last 30 days. Claimant was psychiatrically hospitalized at [REDACTED] through [REDACTED] on a petition filed by his mother in July, 2007, due to a suicidal gesture with a shotgun after he lost his job in this month. Claimant also had court funded residential treatment at [REDACTED], but did not complete it and was sent back to jail.

[REDACTED] quotes the claimant as saying his disability is due to ADHD, long history of alcohol abuse, and being in severe pain every day due to the accident he was in. Claimant described having a feeding tube after the accident and that he now cannot keep his food down. Claimant demonstrated a snoring type sound coming from his throat and neck area, and stated he feels like he is being choked or his neck is being squeezed when he exerts himself such as walking too fast or running.

Claimant's speech was clear, organized and logical. He denied suicidal thoughts, psychosis, paranoia, homicidal ideation, eating disorder, and self injury as behavior. Claimant's affect was flat throughout the evaluation. Claimant's diagnoses included mood disorder, poly substance dependence in early partial remission, personality disorder, and a GAF of 60-65. Prognosis for maintaining gainful employment in a structured repetitive work environment is fair pending any physical limitations imposed by a treating physician. Based upon the claimant's past history he will have a better chance at maintaining gainful employment if he were to return to outpatient therapy. Claimant would be able to manage his own benefit funds with continued sobriety.

November 5, 2007 MRI of claimant's lumbar spine showed unremarkable lumbar spine and posterior fusion in the thoracic spine. There was no visible spondylolysis.

[REDACTED] quotes the claimant as saying that his chief complaints are back injury, bipolar disorder and ADHD. In 2004 claimant sustained a compression fracture from a motor vehicle accident and underwent a T11-L1 spinal fusion. Claimant had another accident in February, 2009, as noted above. Claimant has not had any subsequent therapy, does not use an assistive device, and does not take anything for pain. Claimant's most significant complaint is neck scar tissue from the ventilator he was on following his accident, and that he gets short of breath on exertion.

Claimant has not worked since 2008, now lives with his parents, and can do his activities of daily living. He is able to do household chores but mostly lies on the couch and watches television. Claimant can walk up a flight of steps before he gets winded, does not know how long he can really sit or stand, and cannot lift anything greater than 20 lbs. without becoming winded.

Claimant was cooperative in answering questions and following commands and appeared in mild discomfort. His immediate, recent and remote memory is intact with normal concentration, insight and judgment are both appropriate, and he provided good effort during the examination. Claimant weighed 113 lbs. On physical examination a

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 not support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. Accordingly, claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

At Step 4, the Administrative Law Judge must evaluate claimant's ability to perform past relevant work. Claimant's past relevant work was working in a restaurant. Claimant has provided a letter from his previous employer, [REDACTED], stating he had worked there on and off since he was 15 as a dishwasher, line cook and managing cook. Employer states that the claimant was a good worker but at times unable to control his temper, would get into trouble and end up being arrested, and his employment ended. Employer is of the opinion that the claimant is bi-polar (based on him being a Day Coordinator of Activities for the adult mental health programs of [REDACTED] in the past), and that it would be nearly impossible to find meaningful employment that he would be able to do and hold for any length of time. Finding that the claimant is unable to perform work which he has engaged in the past can therefore be reached and the claimant is not 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 [REDACTED], published by the [REDACTED]... 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 sufficient objective medical evidence that he lacks the residual functional capacity to perform tasks from his prior employment. Claimant could physically perform only sedentary work if demanded of him, as his throat scar tissue impedes his breathing ability and prevents him from performing work that involves physical exertion. Hearing testimony of [REDACTED] is that he has been in clinical practice over 40 years and that he is of the opinion that the claimant is disabled, as he has classic head injury symptoms. Claimant mother testified that she has had to call the police on the claimant before, he blows up at anything and everything, locks himself in his room, threatens suicide, and has been in counseling since 3rd grade. Claimant's aunt testifies that she lived in [REDACTED] and claimant came down there to help rehabilitate houses, that he was fine at first but then slept all day and wandered around all night, did not work, and is not capable of holding a job. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record combined with the hearing testimony does establish that claimant has no residual functional capacity to perform other work at this time, as his psychological issues would affect his ability to perform even sedentary work and relate to co-workers and supervisors.

In conclusion, the claimant has 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). The clinical documentation submitted by the claimant is sufficient to establish a finding that the claimant is disabled. There is 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 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.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly denied claimant's MA, retro MA and SDA application.

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

- (1) Process claimant's disputed October 14, 2009 MA, retro MA and SDA application and grant him any such benefits he is otherwise eligible for (i.e. meets financial and non-financial eligibility requirements).
- (2) Notify the claimant of this determination.
- (3) Review claimant's ongoing eligibility in November, 2011, at which time updated medical records are to be obtained. Claimant is advised that he must follow all prescribed treatment, including psychological treatment, or his MA and SDA eligibility may end if he is in non-compliance with such treatment.

SO ORDERED.

/s/ _____

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

Date Signed: November 18, 2010

Date Mailed: November 19, 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

cc:

