

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: 2010-16121

Issue No: 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 24, 2010

Bay County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 Wednesday, February 24, 2010. The claimant personally appeared and testified with his case [REDACTED]

ISSUE

Did the department properly deny the claimant's application for 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 June 4, 2009, the claimant applied for SDA.

(2) On December 7, 2009, the Medical Review Team (MRT) denied the claimant's application for SDA that the claimant's physical and mental impairment does not prevent employment for 90 days or more.

(3) On December 11, 2009, the department caseworker sent the claimant a notice that his application was denied.

(4) On December 29, 2009, the department received a hearing request from the claimant, contesting the department's negative action.

(5) On February 1, 2010, the State Hearing Review Team (SHRT) considered the submitted objective medical evidence in making its determination of and SDA eligibility for the claimant. The SHRT report reads in part:

The claimant is 39 years old and has a less than high school education, and a history of no gainful employment. Despite the improvement in the claimant's condition and considering the lack of a work history, the claimant would still only retain the ability to perform simple and repetitive tasks.

The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of simple and repetitive work with no physical limitations. Therefore, based on the claimant's vocational profile (39 years old, a less than high school education, and a history of no gainful employment), SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days citing Vocational Rule 204.00 as a guide. MA-P and retroactive MA-P were not applied for by the applicant. Listings 12/02/04/06 were considered in this determination.

(6) The claimant is a 39 year-old man whose date of birth is [REDACTED]. The claimant is 5'11" tall and weighs 230 pounds. The claimant completed the 9th grade of high school where he was Special Education. The claimant stated that he can read and write and do basic math except for division. The claimant stated that he has no pertinent work history.

(7) The claimant's alleged impairments are bipolar disorder, anxiety, attention deficit hyperactivity disorder, and depression.

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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The department's Program Eligibility Manual provides the following policy statements and instructions for caseworkers regarding the SDA program.

DISABILITY – SDA

DEPARTMENT POLICY

SDA

To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older.

Note: There is no disability requirement for AMP. PEM 261, p. 1.

DISABILITY

A person is disabled for SDA purposes if he:

- . receives other specified disability-related benefits or services, or
- . resides in a qualified Special Living Arrangement facility, or
- . is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability.
- . is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

If the client's circumstances change so that the basis of his/her disability is no longer valid, determine if he/she meets any of the other disability criteria. Do NOT simply initiate case closure. PEM, Item 261, p. 1.

Other Benefits or Services

Persons receiving one of the following benefits or services meet the SDA disability criteria:

- . Retirement, Survivors and Disability Insurance (RSDI), due to disability or blindness.
- . Supplemental Security Income (SSI), due to disability or blindness.
- . Medicaid (including spend-down) as blind or disabled if the disability/blindness is based on:
 - .. a DE/MRT/SRT determination, or
 - .. a hearing decision, or
 - .. having SSI based on blindness or disability recently terminated (within the past 12 months) for financial reasons.

Medicaid received by former SSI recipients based on policies in PEM 150 under "**SSI TERMINATIONS, INCLUDING 'MA While Appealing Disability Termination,'**" does not qualify a person as disabled for SDA. Such persons must be certified as disabled or meet one of the other SDA qualifying criteria. See "**Medical Certification of Disability**" below.

- . Michigan Rehabilitation Services (MRS). A person is receiving services if he has been determined eligible for MRS and has an active MRS case. Do not refer or advise applicants to apply for MRS for the purpose of qualifying for SDA.
- . Special education services from the local intermediate school district. To qualify, the person may be:
 - .. attending school under a special education plan approved by the local Individual Educational Planning Committee (IEPC); **or**

- .. not attending under an IEPC approved plan but has been certified as a special education student **and** is attending a school program leading to a high school diploma or its equivalent, **and** is under age 26. The program does not have to be designated as “special education” as long as the person has been certified as a special education student. Eligibility on this basis continues until the person completes the high school program or reaches age 26, whichever is earlier.
- . Refugee or asylee who lost eligibility for Social Security Income (SSI) due to exceeding the maximum time limit PEM, Item 261, pp. 1-2.

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). At Step 1, the claimant is not engaged in substantial gainful activity and has no pertinent work history. Therefore, the claimant is not disqualified from receiving disability at Step 1.

Secondly, in order to be considered disabled for purposes of MA, a person must have a severe impairment. 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual’s physical or mental ability to perform basic work activities. Basic work activities means, 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).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the department may only screen out claims at this level which are “totally groundless” solely from a medical standpoint. The *Higgs* court used the severity requirement as a “*de minimus* hurdle” in the disability determination. The *de minimus* standard is a provision of a law that allows the court to disregard trifling matters.

The objective medical evidence on the record further substantiates the following:

On [REDACTED], the claimant saw his treating psychiatrist at [REDACTED] for a medication review. The claimant was diagnosed with bipolar disorder, NOS, anxiety disorder, NOS, attention deficit disorder, history of alcohol abuse in remission, and learning disorder, NOS. The claimant was dressed appropriately with good hygiene and grooming. The claimant’s weight was 238 pounds where he lost 7 pounds from the last visit. The claimant was pleasant and cooperative with good eye contact. There was no abnormal involuntary movement noted. Thought process was goal-directed. Speech was normal in volume, rate, and rhythm. Mood was improved. The claimant was less anxious and less irritable with congruent affect. There was no

suicidal or homicidal ideation or hallucinations or delusions. The claimant had improved focus, concentration, and memory. Insight and judgment were fair. The claimant's medication was adjusted with a follow-up in 2-3 months. (Department Exhibit 34)

On [REDACTED], the claimant saw his treating physician for a medication review from [REDACTED]. The claimant was diagnosed with bipolar disorder, NOS, anxiety disorder, NOS, attention deficit disorder, history of alcohol abuse in remission, and learning disorder, NOS. The claimant was dressed appropriately with good hygiene and grooming where his weight was 245 pounds where he gained 3 pounds from his last visit. The claimant was pleasant and cooperative with good eye contact. There were no abnormal involuntary movements noted. Thought process was concrete. Speech was pressured. Mood was minimally improved, still anxious, and irritable with congruent affect. There were no suicidal or homicidal ideations. There were also no hallucinations or delusions. The claimant had poor focus, concentration, and memory. Insight and judgment were fair. The claimant's medication was adjusted with a follow-up in 2-3 months. (Department Exhibit 35)

On [REDACTED], the claimant had a psychiatric evaluation at [REDACTED]. The claimant's treating physician diagnosed the claimant with bipolar disorder, NOS, anxiety disorder, NOS, attention deficit disorder, history of alcohol abuse, and learning disorder, NOS. The claimant was given a GAF of 40. The claimant's medication was adjusted where he was given an education on the indications, possible side effects, and alternatives to treatment with follow-up in six weeks. The claimant looked his stated age. He was pleasant, cooperative with good eye contact. The claimant presented with psychomotor agitation. Thought process was tangential. Speech was pressured. Mood was labile and irritable with congruent affect. There were no suicidal or homicidal ideations. There were no hallucinations or delusions noted. The

claimant had poor focus, concentration, and memory. Insight and judgment were fair.

(Department Exhibit 51-52)

At Step 2, the objective medical evidence in the record indicates that the claimant has established that he has a severe impairment. The claimant was diagnosed with bipolar disorder, anxiety disorder, and attention deficit disorder. His GAF was 40 at his annual psychological evaluation on [REDACTED]. The claimant has responded well to treatment through therapy and adjustments in his medication. The claimant has seen improvement in his mental condition. Therefore, the claimant is not disqualified from receiving disability at Step 2. However, this Administrative Law Judge will proceed through the sequential evaluation process to determine disability because Step 2 is a *de minimus* standard.

In the third step of the sequential consideration of a disability claim, 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. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d). This Administrative Law Judge finds that the claimant's impairments do not rise to the level necessary to be listed as disabling by law. Therefore, the claimant is disqualified from receiving disability at Step 3.

In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings that the claimant does not have a

driver's license and does not drive as a result of a drunk driving when younger. The claimant cooks three times a week with no problem. The claimant grocery shops twice a month, but he gets frustrated when he can't find an item so he just asks someone for help. The claimant does clean his own home by straightening up. The claimant doesn't do any outside work. His hobby is cooking. The claimant felt that his condition has worsened in the past year because he doesn't do anything anymore. The claimant stated for his mental impairments he is taking medication and in therapy.

The claimant stated that he wakes up at 11:00 a.m. He has coffee. He straightens up. He watches TV. He does errands or sees his therapist. He takes care of his personal needs. The claimant goes to bed at 11:00 p.m.

The claimant stated that he did not have a problem walking, standing, sitting, or lifting heavy weight. The claimant stated that his level of functioning on a scale of 1 to 10 without medication was a 3/4 that increases 7 with medication.

The claimant smokes 4-5 cigarettes a week. The claimant stopped drinking in January 2009 where before he drank a 12-pack of beer a week. The claimant stated that he does not or has ever taken illegal or illicit drugs. The claimant stated that there was no work that he thought he could do.

This Administrative Law Judge finds that the claimant has not established that he cannot perform any work. The claimant testified that he has no pertinent work history. The claimant is currently in treatment and taking medication for his mental impairments. The claimant should be able to perform simple, unskilled work. Therefore, the claimant is disqualified from receiving disability at Step 4. However, the Administrative Law Judge will still proceed through the

sequential evaluation process to determine whether or not the claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

In the fifth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing other work.

20 CFR 416.920(f). This determination is based upon the claimant's:

- (1) residual functional capacity defined simply as "what can you still do despite your limitations?" 20 CFR 416.945;
- (2) age, education, and work experience, 20 CFR 416.963-.965; and
- (3) the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her limitations. 20 CFR 416.966.

...To determine the physical exertion requirements of work in the national economy, we classify jobs as sedentary, light, medium, heavy, and very 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).

...To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting

factors such as loss of fine dexterity or inability to sit for long periods of time. 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).

Unskilled work. Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength.... 20 CFR 416.968(a).

The claimant has submitted insufficient evidence that he lacks the residual functional capacity to perform some other less strenuous tasks than in his previous employment or that he is physically unable to do any tasks demanded of him. The claimant's testimony as to his limitation indicates his limitations are non-exertional.

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).

In the instant case, the claimant testified that he has bipolar disorder, anxiety, attention deficit hyperactivity disorder, and depression. The claimant is currently taking medication and in therapy. (See analysis in Step 2.) The claimant should be able to perform simple, unskilled work if he continues his therapy and continues to take medication. As a result, there is insufficient medical evidence of a mental impairment that is so severe that it would prevent the claimant from working at any job.

At Step 5, the claimant should be able to meet the physical requirements of medium work, based upon the claimant's physical abilities. Under the Medical-Vocational guidelines, a younger individual with a limited or less education, and no pertinent work history, who has no physical limitations for medium work, is not considered disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 204.00. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as bipolar disorder, anxiety, attention deficit disorder, and depression. 20 CFR 404, Subpart P, Appendix 2, Section 200.00. Using the Medical-Vocational guidelines as a framework for making this decision and after giving full consideration to the claimant's mental impairments, the Administrative Law Judge finds that the claimant can still perform a wide range of simple, unskilled, medium activities and that the claimant does not meet the definition of disabled under the SDA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established that it was acting in compliance with department policy when it denied the claimant's application for SDA. The claimant should be able to perform any level of simple, unskilled, medium work. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is **AFFIRMED**.

/s/ _____
Carmen G. Fahie
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 19, 2010

Date Mailed: April 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.

CGF/vmc

cc:

