

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: 2010-2051  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
November 19, 2009  
Roscommon 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 June 30, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On August 4, 2009, the Medical Review Team denied claimant's application stating that the claimant had a non-exertional impairment.

(3) On August 12, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On September 10, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On October 27, 2009, the State Hearing Review Team (SHRT) again denied claimant's application stating that he was capable of performing other work, namely unskilled work per 20 CFR 416.968(a) and Vocational Rule 203.30.

(6) Claimant submitted additional medical information following the hearing that was forwarded to SHRT for review. On March 5, 2010 SHRT once again determined that the claimant was not disabled, as he retains the capacity to perform a wide range of simple, unskilled work. SHRT also cited P.L. 104-121 due to the materiality of drug and alcohol abuse.

(7) Claimant is a 48 year old man whose birthday is September 26, 1961. Claimant is 6' tall and weighs 180 pounds. Claimant completed one year of college in geology and marine biology, and can read, write and do basic math.

(8) Claimant states that he last worked in 2006 as a carpet layer and flooring installer, job he held for 3 years and from which he was laid off/fired. Claimant has done electrical work for various companies in the past.

(9) Claimant currently lives in housing for the homeless provided by CMH and does not pay rent, and also receives food stamps. Claimant does not have a driver's license as he lost it 5 years ago after having repeated drunken driving offenses for which he went to prison in 2003. Claimant cooks for himself, grocery shops by walking 2 blocks, and cleans his apartment.

(10) Claimant smokes pack of cigarettes per day, but stated he had quit drinking except for “falling off the wagon” couple of times.

(11) Claimant alleges as disabling impairments major depression, bipolar disorder, hepatitis C, and bullet in liver from being shot. Claimant also alleges manic episodes to include hearing voices and seeing people during his last hospitalization.

(12) Claimant has applied for Social Security disability and been denied, and is appealing that 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 2006. 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 treatment note of July 28, 2008 stating that the claimant had no complaints, but was being seen for a cholesterol check. A drug screen was positive for cannabinoids, opiates, and THC. Claimant's physical exam was otherwise within normal limits. Claimant's partial mental status was within normal limits with

the exception of appearing sluggish and sedated. Liver function as determined by albumin and bilirubin was normal. X-ray of claimant's abdomen was within normal limits and there was no evidence of a bullet being present.

Claimant had a physical exam on May 30, 2008 which was reported to be within normal limits.

Claimant attempted suicide by cutting his wrists in August, 2007 after an argument with his girlfriend. In January, 2008 claimant was treated for depression and suicide thoughts without a plan. Claimant denied the use of substances, but a drug screen was reported positive for opiates. Claimant appeared anxious and depressed, but his mental status was otherwise within normal limits. CMH note of February 9, 2008 reported that the claimant was doing very well on Geodon. In February, 2008 claimant was treated for bipolar disorder with some psychotic features, which he believed were the result of being started on Cogentin. Cogentin was tapered and claimant's condition improved without psychotic features.

May 9, 2009 CMH medication review progress note indicates that the claimant was unable to get his medications and ran out of them about two weeks ago. Claimant reported a lot more problems with anxiety, restlessness, mood swings, increasing dysphoria, less sleep, and more tiredness. Claimant denied homicidal or suicidal ideation or plan. Mental status exam showed the claimant as alert, cooperative and pleasant with good eye contact, adequate hygiene and grooming, and casually dressed. There was no psychomotor agitation or retardation. Claimant's speech was logical, coherent and goal directed. Claimant's mood was dysphoric, and affect somewhat constricted but labile. Claimant's cognition was grossly intact, he was oriented times three, and had no formal thought disorder, no delusions or hallucinations, and again no homicidal or suicidal ideation or plan. Significant personality dysfunction is present.

Assessment is that of alcohol abuse, psychotic disorder NOS, mood disorder NOS, social phobia, ADD NOS, panic disorder with agoraphobia, and personality disorder NOS with borderline passive-dependent and self-defeating traits. Claimant's current GAF was 65 to 70.

Claimant was admitted to the hospital on June 5, 2009 on a voluntary basis, and reported wanting to kill himself due to not having medication, place to live or money. Claimant had recently been kicked out of his house and had relationship problems and conflicts. Claimant had previously been at the hospital twice in 2008 for threatening suicide. Claimant reported drinking a half pint of vodka two days ago but claimed before that he had three years of sobriety. Claimant was very vague about his alcohol usage. Claimant also reported smoking marijuana with last use three weeks ago but denied use of any other drugs. Medical exam was non-remarkable except for claimant citing hepatitis C and a bullet in his liver. Mental status exam quotes the claimant as talking about voices in the past, but it is hard to determine if this was caused by his chronic use of alcohol. Claimant was discharged on June 11, 2009 after his medications were stabilized and picked up by CMH center staff.

Additional medical information claimant submitted following the hearing includes a December, 2009 medication review note indicating the claimant was in the hospital after using a lot of drugs and alcohol. Claimant went back to jail after he was released from the hospital. Mental status exam showed that the claimant's speech was logical, coherent and goal directed. Claimant's mood was mildly dysphoric and his affect broad but potentially labile. Claimant had no formal thought disorder, no delusions or hallucinations. Significant personality dysfunction was present. Claimant's diagnosis included alcohol abuse, psychotic disorder NOS, mood disorder NOS, social phobia, ADD NOS, panic disorder with agoraphobia and personality disorder NOS with borderline passive-dependent and self-defeating traits. GAF was 65 to 70.

On January 8, 2010 claimant took numerous Valium and ended up in the hospital. Claimant denied he was attempting to commit suicide and stated he did not intentionally overdose. Laboratory tests showed claimant's bilirubin to be 0.6, within normal limits.

Later in January, 2010 claimant was in jail again, after being picked up when he was released from the hospital. Police had apparently searched claimant's home after he was taken to the hospital earlier in January, 2010 and found a morphine tablet which was not prescribed for him. Claimant reported doing pretty well on his current medications, but he had recently been arrested for disorderly conduct where he had been abusing drugs and alcohol for some time. Claimant had no symptoms of psychosis and reported that his mood lability, which previously had been a problem, had been under good control with his medications. Claimant had good eye contact, his speech was logical, coherent and goal directed. Claimant's mood was mildly dysphoric, affect was broad but potentially labile. There was no evidence of a formal thought disorder, no delusions or hallucinations, and no homicidal or suicidal ideation. Claimant's diagnosis were the same as previously cited.

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. 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 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 would have to deny the claimant based upon his ability to perform past relevant work. Claimant's past relevant work was doing electrical work, carpet laying and flooring installation. Claimant does not appear to have any significant physical issues that would prevent him from doing these type of jobs again. Claimant does have mental issues but continues to abuse alcohol and drugs, at least as of January, 2010. Claimant does well when he is taking his medications and not abusing substances. Finding that the claimant is unable to perform work which he has engaged in in the past cannot therefore be reached and the claimant is 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] of [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 insufficient objective medical evidence that he lacks the residual functional capacity to perform tasks from his prior employment, or that he is physically unable to do at least medium work if demanded of him. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity to perform other work. Claimant is disqualified from receiving disability at Step 5 based upon the fact that he has not established by objective medical evidence that he cannot perform light, sedentary and medium work, or possibly even heavy work. Under the Medical-Vocational guidelines, a younger individual age 45-49 (claimant is age 48), with high

school education and even an unskilled work history who can perform medium work is not considered disabled pursuant to Medical-Vocational Rule 203.28.

The Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) is material to a person's disability and when benefits will or will not be approved. The regulations require the disability analysis be completed prior to a determination of whether a person's drug and alcohol use is material. It is only when a person meets the disability criterion, as set forth in the regulations, that the issue of materiality becomes relevant. In such cases, the regulations require a sixth step to determine the materiality of DAA to a person's disability.

When the record contains evidence of DAA, a determination must be made whether or not the person would continue to be disabled if the individual stopped using drugs or alcohol. The trier of fact must determine what, if any, of the physical or mental limitations would remain if the person were to stop the use of the drugs or alcohol and whether any of these remaining limitations would be disabling.

In claimant's case, even if he met the disability criterion, the evidence presented strongly suggests that his mental limitations are caused by his continued use of drugs and/or alcohol. Such use interferes with claimant's psychological treatment as well as with the benefit of medications he has been prescribed for psychological issues. Claimant's cessation of drug and/or alcohol abuse would certainly benefit any liver issues he may have also.

In conclusion, although the claimant has cited medical problems, the clinical documentation submitted by the claimant is not sufficient to establish a finding that the claimant is disabled. There is no 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 not 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 not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

#### 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 on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of light, sedentary and medium work even with his alleged impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED, and it is SO ORDERED.

/s/ \_\_\_\_\_  
Ivona Rairigh  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: August 12, 2010

Date Mailed: August 12, 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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