

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: 2010-35781
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 15, 2010
Saginaw 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 June 15, 2010. Claimant personally appeared and testified. Also appearing and testifying on claimant's behalf was his [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 March 9, 2010, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On April 19, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On April 27, 2010, the department caseworker sent claimant notice that his application was denied.

(4) On May 3, 2010, claimant filed a request for a hearing to contest the department's negative action.

(5) On May 26, 2010, the State Hearing Review Team again denied claimant's application stating he was capable of performing a wide range of light exertional work of a simple and repetitive nature. Vocational Rule 202.17 was used as a guide.

(6) Claimant is a 49 year old man whose birthday is [REDACTED]. Claimant is 6'3" tall and weighs 200 pounds. Claimant completed 8th grade, was in special education, and cannot read, write or do basic math.

(7) Claimant states that he last worked in 2006 as a factory worker for 5 weeks, job he walked off from, and as a department store maintenance worker for 3 weeks in the same year. Claimant has been in prison several times in the past.

(8) Claimant is currently living with an uncle in an apartment and receives food stamps. Claimant does not have a driver's license as it was suspended a long time ago, does not do any cooking or housework, and mainly spends his days sitting around and watching TV.

(9) Claimant testified that he can take care of his bathing and dressing without help, can sit and stand for 2 hours, and can walk for 1 block.

(10) Claimant alleges as disabling impairments: schizophrenia, neck and back pain, hypertension, headaches, acid reflux, and high cholesterol.

(11) Claimant has applied for Social Security disability in 2009 and been denied, and has an attorney handling his December, 2009 appeal.

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 normal thoracic spine study of August 31, 2009, and a normal lumbar spine examination of the same date. X-ray of claimant's cervical spine revealed moderately prominent degenerative spondylosis at C4-5, C5-6 and C6-7 and to a lesser degree C7-T1, slight degenerative disc interspace narrowing at C3-4, C4-5, C5-6, C6-7 and C7-T1, and slight cervical muscle spasm, mid upper cervical spine.

On January 25, 2010 claimant was admitted to a hospital with a diagnosis of paranoid schizophrenia. Claimant stated he has been hearing voices telling him to commit suicide for the last 2 years. Claimant had jumped into Saginaw River naked, and stated he gets naked walking around, but does not remember doing any of this and has just been told it. Claimant denied any previous psychiatric treatment. Claimant related he drinks alcohol every once in a while, but stated he has been clean from drugs for the last 2 ½ years. Physical examination revealed a well-nourished, well-developed male not in any current distress. Claimant had some tenderness to palpation on the back of his neck, but full range of motion with equal strength bilaterally in his extremities and normal gait. Claimant was alert and oriented to person and day, but stated it was February 25, 2010. Claimant was discharged on January 29, 2010. Discharge Summary states that the claimant has a history of alcohol dependency for numerous years and has never been alcohol free since the age of 15, and that he also did cocaine on a daily basis. Claimant is quoted as saying his last use of alcohol and cocaine was 1 week ago, but that he drinks up to a pint of liquor every day. Claimant was placed on the detox protocol initially and detoxed, was no longer having shakes and tremors and started improving. As the claimant improved, he was no longer hearing voices, had no suicidal thoughts, his mood had significantly improved and detox protocol has worked for him. Mental exam at the time of discharge revealed no suicidal or homicidal ideation. Abstinency from alcohol and cocaine was recommended, and claimant was to follow up for possibility of inpatient substance abuse treatment. Final diagnosis was that of psychosis, not otherwise specified secondary to alcohol dependency and cocaine dependency, mixed personality traits and rule out malingering, mild hypertension, back pain, and current GAF of 45 to 50. Claimant's prognosis will be fair with continued abstinence from alcohol and drugs, and he was to continue on antidepressant medication.

[REDACTED] completed for [REDACTED]. [REDACTED] states that the claimant struggles with back and neck pain, hypertension, and pain in his ankles. Claimant also stated he struggles with learning disabilities, he was in special education and completed only the 8th grade, and he is unable to read or write. Claimant also reported struggling from depressive symptoms that have been present for the past 13 years, and having thoughts of suicide several times per week, but he has no current intent to take his life because of the potential negative impact on his fiancé who accompanied him to the exam. Claimant had recently started attending mental health counseling, but denied any previous psychiatric hospitalizations or substance abuse treatments. Claimant reported being in prison for a total of 10 years with last release being in 2008, and that he has been cocaine and alcohol free for 2 years. Claimant was dressed in clean clothing, his hygiene was good, and his posture and gait unremarkable. His mood was depressed. Claimant appeared to be in contact with reality, there was no unusual motor activity or hyperactivity, and he did not appear to have a tendency to minimize or exaggerate symptomology. Claimant's thoughts were spontaneous and well organized, and there were no problems in pattern or content of speech. He denied the presence of any auditory or visual hallucinations, delusions, obsessions, persecutions, or unusual powers.

Results of the mental status examination revealed abnormalities in concentration, general knowledge, memory, judgment, abstract reasoning, and calculation tasks. Claimant also meets diagnostic criteria for learning disabilities, as he was in special education and completed only the 8th grade and is unable to read or write. Claimant meets diagnostic criteria for major depressive disorder, recurrent, severe, without psychotic symptoms. Conclusion was that the claimant will struggle to obtain or maintain employment, as he has numerous conditions, physically,

psychiatrically, and intellectually, that will adversely impact his current functioning. Claimant's prognosis is poor and he is not able to manage benefit funds.

Medical exam for disability evaluation of October 30, 2009 cites as claimant's chief complaints hypertension, dyslipidemia, neck and back pain and chest pain. Claimant was 195 ½ pounds and had blood pressure of 200/120. Claimant appeared to be developing cataracts in both eyes. He was tender over both shoulders and tender over the trapezius muscles and lower back. Claimant had good peripheral pulse and muscular coordination in his extremities. Claimant was assessed with severe hypertension, depression, bilateral cataracts, chronic neck and back pain, recurrent migraine headaches, GERD, and dyspepsia. Conclusion is that the claimant's pain does limit his ability to do the kind of work he has done in the past, it is possible that he can be trained to do other work that does not involve long standing, lifting heavy objects, or work of that nature. Claimant would benefit from physical therapy and counseling.

It is noted that the claimant's medical record shows that he has not been compliant with medications.

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. These impairments have lasted for 12 months. Claimant has therefore met his burden of proof at Step 2 and analysis continues.

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, based on the opinion of the independent examiner of October, 2009, concludes that the claimant could not perform his past work (that was very brief in nature) as a line worker or maintenance worker. Claimant is not denied from receiving benefits 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] [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. However, claimant's medical record does not show that he is physically unable to do light 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 work of a simple, unskilled nature. Under the Medical-Vocational guidelines, a younger individual age 45-49 (claimant is age 49), with limited education and an unskilled or no work history who can perform light work is not considered disabled pursuant to Medical-Vocational Rule 202.16.

The Administrative Law Judge notes that the claimant had a hospital admission in January, 2010 for what appeared to be a suicide attempt, and his admission diagnosis was schizophrenia. However, during the hospital stay it was concluded that the claimant has been consuming large amounts of alcohol prior to the incident, he had to be detoxed, and his discharge diagnosis was psychosis caused by alcohol and cocaine use. Claimant has repeatedly stated to the medical sources of record that he has never had any psychiatric admissions before in his life, and it would appear if the claimant indeed suffered from a serious mental disease such as schizophrenia he would have had some such admissions/treatments during his 49 years of living. Claimant does have intellectual limitations, but they should not prevent him from performing simple job tasks, especially if he keeps abstaining from alcohol and cocaine use as he claimed he did during the hearing.

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). However, the clinical documentation submitted by the claimant is not sufficient to establish a finding that the claimant is disabled, as he can still perform other work as stated above. 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 simple, light 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: October 25, 2010

Date Mailed: October 25, 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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