

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: 2010-37180
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 30, 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 June 30, 2010. Claimant personally appeared and testified. Claimant was represented by [REDACTED].

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and retro MA?

FINDINGS OF FACT

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

- (1) On October 27, 2009, claimant filed an application for Medical Assistance and retro MA benefits alleging disability.
- (2) On February 3, 2010, the Medical Review Team denied claimant's application stating that claimant could perform unskilled work as he had a non-exertional impairment.
- (3) On February 19, 2010, the department caseworker sent claimant notice that his application was denied. Claimant had applied for State Disability Assistance (SDA) also on February 18, 2010.

- (4) On April 15, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (5) On June 11, 2010, the State Hearing Review Team (SHRT) also denied claimant's application stating he was capable of medium unskilled work per 20 CFR 416.968(a) and Vocational Rule 203.28.
- (6) Claimant submitted additional medical information following the hearing which was forwarded to SHRT for additional review. On July 19, 2010 SHRT again determined that the claimant was not disabled as he was capable of performing unskilled work. SHRT also noted that the newly submitted evidence does not significantly or materially alter the previous recommended decision.
- (7) Claimant is a 47 year old man whose birthday is October 19, 1963. Claimant is 5'8" tall and weighs 150 lbs. Claimant has a GED and a 1998 certificate in tool and die apprenticeship, and can read, write and do basic math.
- (8) Claimant states that he last worked from summer 2007 to January, 2008 as a janitor through a temporary service. Claimant further states he has not worked full time since year 2002 for 3 months in a factory, that he has had a number of temporary jobs, and that his bipolar disorder caused issues with employment. Claimant does not feel he can work full time at present.
- (9) Claimant lives with various relatives as he has no permanent residence and receives food stamps. Claimant does not have a driver's license due to a DUI 11 years ago, cooks simple meals but does not grocery shop, clean or do any outside work due to mental issues. Claimant watches TV and visits with family to pass the time.
- (10) Claimant alleges as disabling impairments bipolar disorder.
- (11) Claimant has applied for Social Security disability in October, 2009 and been denied, and is appealing the 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).

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 1, 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 2, 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 3, 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 2008. 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 January 4, 2010 psychological evaluation quoting the claimant as saying he has had all kinds of problems for years, feeling depressed and had tried to kill himself couple of times. Claimant reported he was hospitalized for psychiatric reasons on one occasion in the 1980's, and that he first began taking psychotropic medications this past year, but has ran out of Depakote a month ago and could not afford more of this medication. Claimant denied any current physical or medical problems.

Claimant admitted to a history of difficulties with alcohol and cocaine abuse, but denied any recent alcohol abuse, and reported he has not used cocaine in the past two years. Claimant denied any difficulties completing his activities of daily living, accomplishing household tasks, or cooking. Claimant's hygiene was intact; there were no problems with ambulation, gross motor control, or fine motor control. Claimant took public transportation to the office and was punctual for his appointment time. Gross attention and concentration faculties were intact, speech was clear, coherent, and goal directed. Overall, no difficulties with mentation were observed. Claimant denied ever experiencing auditory or visual hallucinations, no delusional ideation was observed or endorsed, and he reported he attempted suicide on one occasion in the summer of 2009, but denied any current suicidal ideation or intent. There was no evidence of acute mood swings, and while the claimant described a great deal of anxiousness associated with poor coping, he did not describe any ongoing experiences of acute anxiety of panic attack.

Claimant was diagnosed with major depressive disorder, recurrent, mild, antisocial personality disorder, and a current GAF of 58. Claimant's prognosis is guarded due to the presence of a personality disorder, but he can manage his benefit funds.

██████████ psychological assessment by ██████████ includes a substance use assessment indicating claimant smokes up to 20 joints of marijuana/hashish per week with last use being December 11, 2009, and drinks up to one pint or more of alcohol per day with last use being March 4, 2010.

██████████ Psychiatric Evaluation Report by ██████████ lists as claimant's chief complaints "up and down with my mood, getting in trouble due to anger out of control and being destructive of property". Police was recently called on him due to aggressive and assaultive behavior. Claimant was admitted to ██████████ and then referred to ██████████. Claimant has been in and out of jail recently because of domestic violence, disturbance of peace and violation of probation. Claimant is supposed to be on ██████████ and ██████████, but has not taken any medications since April, 2009. Claimant was hospitalized at a psychiatric hospital three times in the 1980's. In 1989 and 1990 he received outpatient counseling. Claimant has also been involved with ██████████ in the spring of 2009. Claimant was diagnosed with major depression, alcohol dependence in sustained partial remission, and cocaine dependence in sustained full remission.

██████████ states as claimant's chief complaint depression. Mental status examination revealed that the claimant was alert, oriented x3, with adequate memory for short-term and long-term events. Intellect is normal to below average; speech is normal rate and fluency. Claimant denied delusions or hallucinations except does hear perhaps an occasional voice, which is vague. He does have some paranoid thoughts where others he feels might be talking about him behind his back. Claimant did not display any racing thoughts or pressured speech during the interview. There are no compulsions or obsessions that were apparent. Diagnostic impression is that of bipolar type II disorder. Claimant was to be restarted on his Depakote as well as Risperidone, was given a script for 2 months, and was to return in two months for check up.

Mental Residual Functional Capacity Assessment of January 11, 2010 by the medical consultant for disability determination concludes that the claimant is moderately limited with regards to maintaining concentration and managing social interactions. However, the claimant has not experienced substantial loss with regards to his ability to understand, carry out, and remember simple instructions; and make simple work-related judgments and decisions. Claimant is seen as retaining the capacity for performing simple, repetitive tasks.

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. This impairment has lasted 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 would have to deny the claimant based upon his ability to perform past relevant work. Claimant's past relevant work was simple labor jobs, last one being as a janitor. Claimant does have mental issues, but the record indicates he was using alcohol on a daily basis in March, 2010, and claimant testified that he is still drinking "once in a while". Claimant has also not been compliant with his psychotropic medications in the past, but has been issued medications in May, 2010 that were to help with his depression and mood. Therefore, it appears that if the claimant abstains from use of alcohol that can possibly account for his violent moods, mood swings and problems with other people and uses his medications as prescribed, both actions within his control, he should be able to perform his past relevant work. Finding that the claimant is unable to perform work which he has engaged 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]... 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 even heavy 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 any type of work, as his record indicates he has no physical issues. Under the Medical-Vocational guidelines, an individual who can perform heavy work is not considered disabled pursuant to Medical-Vocational Rule 204.00.

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 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. 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.

Claimant did apply for SDA in February, 2010, but this hearing addressed only MA and retro MA application of October 27, 2009, as that is the issue at hand.

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 and retroactive Medical Assistance benefits. The claimant should be able to perform a wide range of sedentary, light, medium and heavy unskilled 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: December 16, 2010

Date Mailed: December 17, 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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