

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

IN THE MATTER:



Reg No. 201041322
Issue No. 2009
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: August 18, 2010
Berrien County DHS

ADMINISTRATIVE LAW JUDGE: Jana A. Bachman

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, a telephone hearing was held on August 18, 2010.

ISSUE

Whether claimant has established disability for Medical Assistance (MA)?

FINDINGS OF FACT

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

1. May 18, 2010, claimant applied for MA and retroactive MA.
2. June 21, 2010, the Medical Review Team (MRT) denied claimant's application. Department Exhibit A.
3. June 14, 2010, the department sent claimant written notice that the application was denied. Department Exhibit C.
4. June 24, 2010, the department received claimant's timely request for hearing.

5. July 8, 2010, the State Hearing Review Team (SHRT) denied claimant's application. Department Exhibit B.
6. August 18, 2010, the telephone hearing was held.
7. Claimant asserts disability based on impairments caused by pancreatitis, COPD, seizures, and post-traumatic stress disorder (PTSD).
8. Claimant testified at hearing. Claimant is 58 years old, 5'4" tall, and weighs 135 pounds. Claimant completed high school and one year of college. She is able to read, write, and perform basic math. Claimant has a driver's license but does not drive due to seizures. Claimant cares for her needs at home.
9. Claimant has no past relevant work history.
10. April 17, 2009, claimant was seen by a psychiatrist. Treatment notes indicate that claimant was neatly and casually dressed and in no acute distress. Patient described mood as anxious. Affect was observed to be mood congruent. Speech had a slight stammer. Thought processes were mildly tangential and patient reported occasional redirection. Thought content was remarkable for history of active and passive suicidal ideation. Patient denied current suicidal ideation. Patient denied homicidality. Psychosis, insight and judgment seemed somewhat limited. Doctor indicated that claimant had a long history of severe alcoholism and apparently little insight in to it. She had a history of seizure disorder but it was unclear if the disorder was a result of alcoholism or was aggravated by alcoholism. Patient also reports pancreatitis suggesting the severity of her alcoholism. Patient appears to have strong baseline anxiety. AXIS I diagnoses were PTSD by history, primary insomnia, and polysubstance dependence. GAF was assessed at 48. Department Exhibit A, pgs 23-24. Psychiatry treatment notes dated July 13, 2009 indicate same basic conditions; however, doctor noted claimant appeared somewhat improved since the he last saw her. Department Exhibit A, pgs 25-28. December 2009 treatment notes indicate patient appears to be doing better psychologically but appears to have physical issues. Department Exhibit A, pgs 33-34. March 2010 notes indicate patient appears to be doing much better. Department Exhibit A, pgs 36-37.
11. June 10, 2010, claimant's physician completed a Medical Examination Report (DHS-49) following physical exam that took place on June 10, 2010. Doctor indicates diagnoses of history of seizures. Physical exam was within normal limits with the following

exceptions: blood pressure 82/49; faint systolic murmur; and history of seizures. Doctor indicates that claimant is occasionally able to lift 25 pounds. She is able to stand and/or walk less than 2 hours in an 8 hour workday and is able to sit less than 6 hours in an 8 hour workday. She is able to perform a full range of repetitive actions with upper extremities bilaterally and lower extremities bilaterally. Doctor opines that claimant has decreased comprehension due to microvascular disease per brain MRI 1-3-10. Department Exhibit A, pgs 3-5. Doctor submitted an "adult problem list" that indicates the following chronic problems: post-traumatic stress disorder, history of alcoholism, COPD, history of migraines, pancreatitis, internal hemorrhoids, status post low GI bleeding, seizure disorder, alcoholic liver, depression, Ambien overdose, history of gastric ulcer, carotid bruit, use of marijuana, medical noncompliance, and history of domestic abuse. Department Exhibit A, pg 11.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the 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 (formerly known as the Family Independence Agency) 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 (PRM).

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. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

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).

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).

If an individual fails to cooperate by appearing for a physical or mental examination by a certain date without good cause, there will not be a finding of disability. 20 CFR 416.994(b)(4)(ii).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).

3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant is not engaged in substantial gainful activity and so is not disqualified from receiving disability at Step 1.

At Step 2, the objective medical evidence indicates that claimant has post-traumatic stress disorder and polysubstance abuse. Claimant's GAF was assessed at 48 over the course of treatment during 2009 and 2010 indicative of serious symptoms or serious impairments. However, claimant's psychiatric treatment records indicate an AXIS I diagnosis of polysubstance abuse. Public Law 104-121 provides that no finding of disability shall be made where substance abuse is a material causative factor in claimant's asserted disability. Accordingly, no finding of disability shall be made due to AXIS I diagnosis of polysubstance abuse. Finding of Fact 10-11; DSM IV, 1994 R.

At Step 2, the objective medical evidence of record indicates claimant has a history of numerous physical conditions including pancreatitis, seizure disorder, migraine headaches, COPD, and carotid bruit. The objective medical evidence of record does not indicate that claimant has severe impairments due to any of these conditions. Finding of Fact 10-11.

At Step 2, the objective medical evidence of record is not sufficient to establish that claimant has severe physical and/or mental impairments that had lasted or are expected to last 12 months or more and prevent all employment for 12 months or more. Accordingly, claimant is disqualified from receiving disability at Step 2.

At Step 3, claimant's impairments do not meet or equal any Social Security Listing. Public Law 104-121 is cited as at Step 2 above.

At Step 4, claimant has no past relevant employment. Accordingly, a Step 4 analysis cannot be completed.

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 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).

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).

At Step 5, see discussion at Step 2 above. Finding of Fact 10-11. Public Law 104-121 is cited as above.

At Step 5, the objective medical evidence of record is sufficient to establish that claimant is capable of performing unskilled work duties that avoid heavy machinery and unprotected heights. Accordingly, claimant is not disabled and is disqualified from receiving disability at Step 5.

Claimant does not meet the federal statutory requirements to qualify for disability. Accordingly, claimant does not meet the disability requirements to qualify for

Medical Assistance based on disability. The department properly denied claimant's application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant has not established disability for Medical Assistance.

Accordingly, the department's action is, hereby, UPHELD.

/S/
Jana A. Bachman
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: October 20, 2010

Date Mailed: October 20, 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.

JAB/ db

cc:

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