

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No. 2011-14179
Issue No. 2009; 4031
Case No. [REDACTED]
Hearing Date: May 24, 2011
Genesee County DHS (#5)

ADMINISTRATIVE LAW JUDGE: William A. Sundquist

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, an in person hearing was held on May 24, 2011.

Medical reports (Claimant Exhibit A) submitted after the hearing for a second SHRT review delayed the D&O below.

ISSUE

Was severe mental/physical impairment expected to preclude claimant from substantial gainful work, **continuously**, for one year (90 days for 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. Claimant has not worked since October 2009.
2. In October 2009, claimant was laid off from his last employment; thereafter he became a UCB recipient until June 2010, and now resides in a rehab facility for alcohol dependence.
3. Claimant alleges that he became unable to do any past work or any other work due to depression, alcohol dependence, and a seizure disorder.
4. On February 12, 2010, the claimant applied for Medicaid (three months retro)/SDA, was denied on May 8, 2010, and requested a hearing on July 27, 2010.

5. Claimant's vocational factors are: age 46, 12th grade education, and past work experience as an unskilled store cashier, semi-skilled wood cutter, skilled retail sales building supplies.
6. Medical exam on March 5, 2009 states the claimant's mental/physical limitations as follows: alcohol dependence with a GAF score of 55 (Medical packet, page 39).
7. Medical exam on November 2, 2009 states the claimant's mental/physical limitations as follows: diagnoses of acute alcohol withdrawal, seizure and chronic alcohol abuse (Claimant Exhibit B, page 7).
8. Medical exam on January 25, 2010 states the claimant's mental/physical limitations as follows: diagnoses of bipolar disorder and alcohol dependency with a GAF score of 30 (Claimant Exhibit B, page 18).
9. Medical exam on June 7, 2010 states the claimant's mental/physical limitations as follows: diagnoses of bipolar disorder and alcohol dependence with a GAF score of 20; that recent and remote memory are intact; that immediate recall is good; that general information average counting and calculation are average; that abstract thinking is intact; and that insight and judgment are limited (Claimant Exhibit B, pages 1 and 2).
10. Medical exam on June 7, 2010 states the claimant's mental/physical limitation as follows: that he is alert, oriented and responsive to questions relevantly (Claimant Exhibit B, page 24).
11. Medical exam on November 19, 2010 states the claimant's mental/physical limitations as follows: diagnoses of alcohol dependence with a current GAF score of 57 (SHRT Exhibit, page 3).
12. SHRT report dated February 14, 2011 states the claimant's impairments do not meet/equal a Social Security Listing (Medical Packet, page 89).

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

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 Bridges Reference Manual (BRM).

Facts above are undisputed.

"Disability" is:

...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.

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, the evidence of record establishes that the claimant has not been engaged in substantial gainful activity since October 2009. Therefore, disability is not denied at this step.

At Step 2, the objective medical evidence of record does not establish that the claimant is significantly limited in performing basic mental/physical work activities, as defined below, for the required duration stated below.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

Non-severe impairment(s). An impairment or combination of impairments is not severe if it does not significantly limit your physical or mental ability to do basic work activities. 20 CFR 416.921(a).

Basic work activities. When we talk about basic work activities, we mean the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and

- (6) Dealing with changes in a routine work setting.
20 CFR 416.921(b).

The claimant has the burden of proof to establish that he has a severely restricted mental or physical impairment that has lasted or can be expected to last for the duration of at least 12 months. There is insufficient objective medical evidence in the record that claimant suffers a severely restricted mental or physical impairment for the required duration.

The medical evidence of record shows the claimant's GAF scores of 55, 30, 20, and 57 in March 2009 and in January, June, and November 2010, respectively.

GAF scores under 40 are considered persons with a major impairment and unable to work. Scores in the 50 range are considered persons with moderate, not severe, difficulty in job functioning. [REDACTED] [REDACTED]).

Therefore, the duration requirement of one continuous year has not been established.

There is no evidence of record that the claimant is significantly limited from performing basic physical work activities for the required duration. He admits that his heart disease is not disabling; and that, but for his depression/alcohol and medications, he would be able to work. Therefore, disability is denied at this step.

If claimant had not been denied at Step 2, the analysis would proceed to Step 3 for the medical evidence of claimant's condition does not give rise to a finding that he would meet a statutory listing in the Code of Federal Regulations. In order to qualify as disabled, a severe impairment for the required duration has to be first established under Step 2 as meeting a Social Security Listing.

The claimant offered no evidence by a treating, examining, or nontreating physician addressing any Social Security Listing. And to the contrary, the SHRT medical consultant addressed the issue and found no disability under Step 3. Therefore, disability is not established at Step 3.

If claimant had not already been denied at Steps 2 and 3, he would have to be denied again at Step 4 based upon his ability to perform his past work, despite his impairment. There is no evidence upon which this ALJ could base a finding that claimant is unable to perform work in which he has engaged in the past for the required one year duration. Therefore, disability would be denied again at this step.

The ALJ will continue to proceed through the sequential evaluation process to determine whether or not claimant has a residual functional capacity to perform some other less strenuous task than in his prior jobs.

If claimant had not already been denied at Steps 2, 3, and 4, he would be denied again at Step 5. At Step 5, the objective medical evidence of record does not establish that the claimant is without a residual functional capacity for the required duration for other work in the national economy.

...Your residual functional capacity is what you can still do despite limitations. If you have more than one impairment, we will consider all of your impairment(s) of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions, as described in paragraphs (b), (c) and (d) of this section. Residual functional capacity is an assessment based on all of the relevant evidence.... 20 CFR 416.945(a).

...To determine the physical exertion requirements of work in the national economy, we classify jobs as sedentary, light, medium, heavy, and very heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor.... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Claimant has submitted insufficient objective medical evidence that he lacks the residual functional capacity to perform some other less strenuous work than in his prior employment or that he is physically unable to do sedentary type work, as defined above, if demanded of him with his impairments. Claimant has failed to provide the necessary objective medical evidence to establish that he has a severe physical impairment or combination of impairments which would prevent him from performing any level of work for a period of 12 months. Therefore, disability is denied at Steps 2, 3, 4, and 5.

The department's Program 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, p. 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.

Therefore, disability is denied at Steps 2, 3, 4, and 5.

The Federal Regulations at 20 CFR 404.1535 speak to the determination of whether [REDACTED] 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 [REDACTED] to a person's disability.

If claimant had not already been denied at Steps 2, 3, 4, and 5, he would be denied again at Step 6. At Step 6, when the record contains evidence of [REDACTED], 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 drugs or alcohol and whether any of these remaining limitations would be disabling.

Claimant's testimony and the information indicate that the claimant has a history of alcohol abuse. Applicable herein is the [REDACTED] legislation [REDACTED]), [REDACTED]. The law indicates that individuals are not eligible and/or are not disabled where drug addiction or alcohol is a contributing factor material to the determination of disability. After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that claimant does not meet the statutory disability definition under the authority of the [REDACTED] legislation because his substance abuse is material to his alleged impairment and alleged disability.

Therefore, disability would be denied at Step 6.

Therefore, the claimant has not established disability, as defined above, by the necessary competent, material, and substantial evidence on the whole record.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that disability was not medically established.

Accordingly, Medicaid/SDA denial is UPHELD.

William A Sundquist

William A. Sundquist
Administrative Law Judge
For Maura D. Corrigan, Director
Department of Human Services

Date Signed: October 31, 2011

Date Mailed: October 31, 2011

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.

WAS/tg

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