

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

IN THE MATTER OF:



Reg. No: 201144792
Issue No: 2009, 4031
Case No: [REDACTED]
Hearing Date: November 3, 2011
Ingham County DHS

ADMINISTRATIVE LAW JUDGE: Christopher S. Saunders

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 3, 2011. The claimant personally appeared and provided testimony.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA), retroactive MA, 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 November 30, 2010, claimant filed an application for Medical Assistance benefits, retroactive Medical Assistance benefits, and State Disability Assistance benefits alleging disability.
- (2) On June 17, 2011, the Medical Review Team denied claimant's application stating that there was insufficient evidence to show that the claimant was disabled.
- (3) On June 22, 2011, the department caseworker sent claimant notice that his application was denied.
- (4) On August 1, 2011, claimant filed a request for a hearing to contest the department's negative action.

- (5) On August 30, 2011, the State Hearing Review Team again denied claimant's application stating that the claimant retains the capacity to perform a wide range of unskilled work.
- (6) On January 29, 2009, the claimant was seen at the [REDACTED] where he was diagnosed with chronic anxiety and depression as well as high blood pressure. (Department Exhibit A page 28).
- (7) The claimant was seen again at the [REDACTED] on March 10, 2010. At this visit, the claimant was diagnosed with hypertension, GERD, alcoholism, and depression. He was advised to quit smoking and reduce his alcohol intake, and if he could not do so, to resume attending AA meetings. He was further advised to volunteer in order to facilitate getting back into the job market. (Department Exhibit A pages 23-26).
- (8) On April 21, 2010, the claimant was seen again at the [REDACTED] where it was noted that he was feeling "ok". It was noted that the claimant was still experiencing high anxiety at times but that he was feeling less depressed. (Department Exhibit A page 21).
- (9) The claimant was seen again at the [REDACTED] on October 19, 2010 where the claimant was noted as having anxiety. (Department Exhibit A page 20).
- (10) On May 19, 2011, the claimant was seen by [REDACTED] at [REDACTED], P.C. for a psychological evaluation requested by the department. The claimant received an Axis I diagnosis of major depressive disorder, recurrent, severe, without psychotic features. He was assessed with a GAF of 45. [REDACTED] noted that the claimant exhibited diminished capabilities for social judgment and comprehension. The doctor also noted that the claimant appeared to have "severely impaired capabilities to interact appropriately and effectively with co-workers and supervisors, and to adapt to changes in the work setting." [REDACTED] opined that the claimant's multiple limitations would result in "severely impaired capacity to do work-related activities." While it was noted that the claimant had a well organized and coherent thought process, [REDACTED] also noted that the claimant was very disheveled. [REDACTED] noted that the claimant had extremely bad personal hygiene, his clothes were very dirty, and that the claimant seemed unaware of his presentation. (Department Exhibit A pages 4-7).
- (11) Claimant is a 45 year old single man, date of birth [REDACTED]. He stands 6'2" tall and weighs 315 lbs. He graduated from high school and received a diploma. The claimant has no further formal education or training beyond high school. The claimant's work history consists mainly of factory work. Claimant is not currently working and has not worked since 2005.

- (12) The claimant testified that he had not applied for Social Security Disability benefits.

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 (PRM).

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 (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

In general, claimant has the responsibility to prove that he/she is disabled. Claimant's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only claimant's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the claimant has an impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

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.

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).

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 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 law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant's symptoms can be managed to the point where substantial gainful activity can be achieved, a finding of not disabled must be rendered.

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).

In determining how a severe mental impairment affects the client's ability to work, four areas considered to be essential to work are looked at:

...Activities of daily living including adaptive activities such as cleaning, shopping, cooking, taking public transportation, paying bills, maintaining a residence, caring appropriately for one's grooming and hygiene, using telephones and directories, using a post office, etc. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(1).

..Social functioning refers to an individual's capacity to interact independently, appropriately, effectively, and on a sustained basis with other individuals. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

Social functioning includes the ability to get along with others, such as family members, friends, neighbors, grocery clerks, landlords, or bus drivers. You may demonstrate impaired social functioning by, for example, a history of altercations, evictions, firings, fear of strangers, avoidance of interpersonal relationships, or social isolation. You may exhibit strength in social functioning by such things as your ability to initiate social contacts with others, communicate clearly with others, or interact and actively participate in group activities. We also need to consider cooperative behaviors, consideration for others, awareness of others' feelings, and social maturity. Social functioning in work situations may involve interactions with the public, responding appropriately to persons in authority (e.g., supervisors), or cooperative behaviors involving coworkers. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

We do not define "marked" by a specific number of different behaviors in which social functioning is impaired, but by the nature and overall degree of interference with function. For example, if you are highly antagonistic, uncooperative or hostile but are tolerated by local storekeepers, we may nevertheless find that you have a marked limitation in social functioning because that behavior is not acceptable in other social contexts. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

...Concentration, persistence or pace refers to the ability to sustain focused attention and concentration sufficiently long to permit the timely and appropriate completion of tasks commonly found in work settings. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

Limitations in concentration, persistence, or pace are best observed in work settings, but may also be reflected by limitations in other settings. In addition, major limitations in this area can often be assessed through clinical examination or psychological testing. Wherever possible, however, a mental status examination or psychological test data should be supplemented by other available evidence. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

Episodes of decompensation are exacerbations or temporary increases in symptoms or signs accompanied by a loss of adaptive functioning, as manifested by difficulties in performing activities of daily living, maintaining social relationships, or maintaining concentration, persistence, or pace. 20 CFR 404, Subpart P, App. 1, 12.00(C)(4).

Episodes of decompensation may be demonstrated by an exacerbation in symptoms or signs that would ordinarily require increased treatment or a less stressful situation (or a combination of the two). Episodes of decompensation may be inferred from medical records showing significant alteration in medication; or documentation of the need for a more structured psychological support system (e.g., hospitalizations, placement in a halfway house, or a highly structured and directing household); or other relevant information in the record about the existence, severity, and duration of the episode. 20 CFR 404, Subpart P, App. 1, 12.00(C)(4).

The evaluation of disability on the basis of a mental disorder requires sufficient evidence to: (1) establish the presence of a medically determinable mental impairment(s); (2) assess the degree of functional limitation the impairment(s) imposes; and (3) project the probable duration of the impairment(s). Medical evidence must be sufficiently complete and detailed as to symptoms, signs, and laboratory findings to permit an independent determination. In addition, we will consider information from other sources when we determine how the established impairment(s) affects your

ability to function. We will consider all relevant evidence in your case record. 20 CFR 404, Subpart P, App. 1, 12.00(D).

When we rate the degree of limitation in the first three functional areas (activities of daily living; social functioning; and concentration, persistence, or pace), we will use the following five-point scale: none, slight, moderate, marked, and extreme. When we rate the degree of limitation in the fourth functional area (episodes of decompensation), we will use the following four-point scale: none, one or two, three, four or more. The last is incompatible with the ability to do any gainful activity. 20 CFR 416.920a(c).

After we rate the degree of functional limitation resulting from the impairment(s), we will determine the severity of your mental impairment(s). 20 CFR 416.920a(d).

If we rate the degree of your limitation in the first three functional areas as “none” or “mild” and “none” in the fourth area, we will generally conclude that your impairment(s) is not severe, unless the evidence otherwise indicates that there is more than a minimal limitation in your ability to do any basic work activities. 20 CFR 416.920a(d)(1).

If your mental impairment(s) is severe, we will then determine if it meets or is equivalent in severity to a listed mental disorder. We do this by comparing the diagnostic medical findings about your impairment(s) and the rating of the degree of functional limitation to the criteria of the appropriate listed mental disorder. 20 CFR 416.920a(d)(2).

If we find that you have a severe mental impairment(s) that neither meets nor is equivalent in severity to any listing, we will then assess your residual functional capacity. 20 CFR 416.920a(d)(3).

At Step 1, claimant is not engaged in substantial gainful activity and has not worked since 2005. Claimant is not disqualified from receiving disability at Step 1.

At Step 2, the claimant's symptoms are evaluated to see if there is an underlying medically determinable physical or mental impairment(s) that could reasonably be expected to produce the claimant's pain or other symptoms. This must be shown by medically acceptable clinical and laboratory diagnostic techniques. 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.

This Administrative Law Judge finds that the objective medical evidence of record does support the claimant's contention that he is suffering from a severe impairment. The objective medical evidence shows that the claimant's anxiety and depression do present a limiting effect on the claimant's ability to perform work related activities. The objective medical evidence of record shows claimant's impairments do meet the *de minimus* level of severity and duration required for further analysis.

The analysis then proceeds to Step 3. The objective medical evidence of record does not support a finding that claimant's diagnosed impairments, standing alone or combined, are severe enough to meet to meet or equal any specifically listed impairments; consequently, the analysis must continue.

At Step 4, it must be determined whether or not claimant has the ability to perform his past relevant work. Claimant has a history of light to medium, unskilled employment. There is objective medical evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work in which he was previously engaged in. The objective medical evidence of record supports the finding that the claimant would no longer be able to perform light work. Therefore, because this Administrative Law Judge finds that the claimant is not able to perform his past relevant work, a finding of disabled is not precluded 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 some other jobs.

At Step 5, this Administrative Law Judge must determine whether or not claimant has the residual functional capacity to perform some other jobs in the national economy. This Administrative Law Judge finds that the objective medical evidence on the record does not support the finding that the claimant still retains the residual functional capacity to perform other work.

The claimant was referred to [REDACTED] (a licensed Psychologist) for a psychological evaluation at the request of the department. At said evaluation, [REDACTED] administered the Beck Depression Inventory, Existential Anxiety Scale and Social Avoidance and Distress Scale to the claimant. Based on the claimant's responses to those tests, [REDACTED] found evidence that the claimant had severe levels of depression and anxiety. [REDACTED] further noted that the claimant's depression and anxiety were characterized by persistent sadness, despair about the future, feelings of being a complete failure, loss of interest in the external world, difficulty being able to make decisions, sleep disturbance, and reduced energy and enthusiasm among other traits. Based upon the results of the above-mentioned tests, [REDACTED] found that the claimant exhibited

diminished capabilities for social judgment and comprehension and that he has an inability to live independently and maintain himself in employment.

In relation to the claimant's ability to perform activities of daily living, the objective medical evidence of record shows that the claimant suffers with personal hygiene and has a history of being kicked out of his residence by his mother. He testified at the hearing that he lives with his mother but that she periodically kicks him out because he will not do anything around the house. At his psychological examination, [REDACTED] noted that the claimant was extremely disheveled and had very poor personal hygiene. The doctor further noted that the claimant seemed to be unaware of this. The claimant's inability to live independently, maintain a residence, and to provide himself with adequate hygiene show that he has marked restrictions in his activities of daily living.

Additionally, the evidence of record shows that the claimant also has marked restrictions in social functioning. The claimant's testimony indicates that he has very little contact with individuals outside his immediate family and that his contact with those individuals is limited as well. Furthermore, the claimant's psychological evaluation states that, in the opinion of [REDACTED], the claimant "appears to have Severely Impaired capabilities to interact appropriately and effectively with co-workers and supervisors, and to adapt to changes in the work setting." (Department Exhibit A page 6). The objective medical evidence (specifically the results of the psychological evaluation performed by Dr. Ostein) show that the claimant has marked restrictions in social functioning.

20 CFR, Part 404, Subpart P, App. 1, 12.00(C) states that in determining mental residual functional capacity the areas of activities of daily living and social functioning are two of the four areas that must be examined to determine the claimant's mental residual functional capacity. Because this Administrative Law Judge finds that the claimant has marked restrictions in both of these categories, the claimant does not have the mental residual functional capacity to perform substantial gainful activity. As such, the claimant meets the standard for MA-P and SDA according to the statute.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant meets the MA-P and SDA disability standard.

Accordingly, the department's decision is **REVERSED**.

It is further ORDERED that if the claimant is otherwise eligible for MA-P and SDA benefits, the department shall review his eligibility for disability benefits in one year from the date this decision and order is mailed.

/s/

Christopher S. Saunders
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: December 2, 2011

Date Mailed: December 5, 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.

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