

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: 2008-30450  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
January 7, 2009  
Macomb County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

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 January 7, 2009. Claimant personally appeared and testified.

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 June 11, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On August 14, 2008, the Medical Review Team denied claimant's application based upon its determination that claimant has substance abuse pursuant to Public Law 104-121.

(3) On August 23, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On September 3, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On September 18, 2008, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The claimant may have difficulty performing skilled work, however he should be capable of performing a wide range of unskilled work. Public Law 104-121 is incorporated herein. Medical opinion was considered in light of CFR 416.927. The evidence in the file does not demonstrate any other impairments that would pose a significant limitation. The claimant retains the residual functional capacity to perform unskilled work. The claimant's past work was unskilled. Therefore, the claimant retains the capacity to perform his past relevant work. MA-P is denied per 20 CFR 416.920(e). Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 due to the capacity to perform past relevant work.

(6) The hearing was held on January 7, 2009. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(7) Additional medical information was submitted and sent to the State Hearing Review Team.

(8) On January 20, 2009, the State Hearing Review Team again denied claimant's application stating that claimant's denial is based upon drug and alcohol use as material 20 CFR 416.435 and that the claimant retains the residual functional capacity to perform unskilled work per 20 CFR 416.968(a).

(9) Claimant is a 25-year-old man whose birth date is [REDACTED]. Claimant is 5' 7" tall and weighs 175 pounds. Claimant is a high school graduate and testified that he reads on a 5<sup>th</sup> grade level and does have basic math skills.

(10) Claimant last worked [REDACTED] in a bowling alley customer service. Claimant also worked doing factory work and in a hospital serving food trays and as a dish washer.

(11) Claimant alleges as disabling impairments: bipolar disorder, depression, obsessive compulsive disorder, and substance abuse as well as acid reflex, also some liver damage and panic attacks.

### 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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) 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).

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).

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).

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 is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that [REDACTED] notes indicate that claimant has been treated for some time with a primary diagnosis of: obsessive compulsive disorder, bipolar disorder, acute alcohol intoxication. Mental status evaluation of [REDACTED] reported the claimant to be cooperative, with restricted affect, logical, good hygiene and grooming, and normal mood. Social work note of [REDACTED] reported the claimant to have complaints of strong urges of harming himself and others; however he was oriented, cooperative, calm with normal mood and appropriate affect (page 45, 58 and 67). An [REDACTED] report indicates claimant has a GAF of 45 and that he is bipolar and has mood stressors. He was oriented in three spheres and he is fully cooperative with the evaluation procedures. Claimant has had ADHD since childhood, there were no signs of psychosis. He was only markedly limited in the areas of ability to understand or remember detailed instructions, the ability to work in coordination with or proximity to others without being distracted by them; and between moderately and markedly limited in the ability to perform activities within a schedule, maintain regular attendance and be punctual within customary tolerances, the ability to complete a normal work day and work week without interruptions from psychologically based symptoms and able to perform at a consistent pace without an unreasonable number and length of rest periods, the ability to accept instructions and respond appropriately to criticism from supervisors and in the ability to get along with his coworkers and peers without distracting them or exhibiting behavioral extremes (page 5-8 of the new information). Records from [REDACTED] indicated that cognitive functions are essentially within normal limits and he had average intelligence and marginal judgment. He was admitted to inpatient psychiatric unit because he alleged that he had racing thoughts and auditory hallucinations and that he was paranoid and suspicious.

At Sep 2, claimant has the burden of the proof of establishing that he has a severely restrictive physical or mental impairment that has lasted or is expected to last for a duration of at least 12 months. In the instant case, claimant does not have an allegation of a severely restrictive physical impairment. Claimant has alleged severely restrictive mental impairments. Claimant has alleged a history of slight liver damage and that he did have some ulcers in [REDACTED] and that he does have acid reflux but these impairments are not considered to be severe. There is no medical finding that claimant has any muscle atrophy or trauma or abnormality or injury that is consistent with the deteriorating physical condition. Claimant testified that his driver's license is suspended and that his sister takes him where he needs to go. Claimant testified that his mother cooks for him and that he goes grocery shopping with his mother and his mother makes a list. Claimant testified that he cleans his home by washing dishes, windows, and vacuuming and that his hobby is bowling and that he does shovel snow outside. Claimant testified that he can walk around, has no limited ability to stand or sit and is able to shower and dress himself, squat, bend at the waist, tie his shoes but not touch his toes. Claimant testified the heaviest weight he can carry is 30 pounds and that he is right handed and that his hands and arms are fine. Claimant testified his level of pain on a scale from 1-10 without medication was past 10 and with medication was a 4. Claimant testified that he does smoke 5 or 10 cigarettes per day and his doctor has told him to quit but he is not in a smoking cessation program. Claimant testified that his knees and feet are fine; and that he stopped using marijuana a few months ago and stop drinking beer about one year before the hearing.

There is insufficient objective medical evidence in the record indicating claimant suffers mental limitations resulting from his reportedly depressed state. The mental residual functional capacity assessment in the record does not indicate that claimant is unable to perform any work based upon his mental condition. The evidentiary record is insufficient to find that claimant

suffers a severely restricted mental impairment. For these reasons, this Administrative Law Judge finds the claimant has failed to meet his burden of proof in Step 2. Claimant must be denied benefits of this step.

If claimant had been denied at Step 2, the analysis would proceed to Step 3 where 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 Regulations.

If claimant had not already been denied at Step 2, this Administrative Law Judge would have to deny him again at Step 4 based upon his ability to perform his past relevant work. Claimant's last relevant work was working in a bowling alley in customer service. If claimant had not already been denied at Step 2, he would be denied again at Step 4 because he should be able to perform his past work as a janitor/customer service person even with his impairments. Claimant is disqualified 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 some other less strenuous tasks than in his prior 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 *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).

Claimant has submitted insufficient objective medical evidence that he lacks the residual functional capacity to perform some other less strenuous tasks than his prior employment or that he is physically unable to do light or sedentary work if demanding of him. Claimant's activities of daily living do not appear to be very limited and he should be able to perform light or sedentary work even with his impairments. The claimant's testimony as to his limitations indicates that he should be able to perform light or sedentary work.

Claimant's testimony and the information contained in the file indicate that claimant has a history of alcohol and tobacco abuse. Applicable herein is the drug abuse and alcohol (DA&A), legislation, Public Law 104-121, Section 105. The law indicates that individuals are not eligible

and/or not disabled where drug addiction or alcoholism is a contributing factor and material to the determination of disability. After careful review of 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 DA&A legislation because his substance abuse is material to the alleged impairments and alleged disability.

Claimant testified on the record that he does have bipolar disorders, depression, and obsessive compulsive disorder.

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).

There is insufficient objective medical/psychiatric evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. In addition, based upon claimant's medical reports, it is documented that he had heavy use of alcohol as well drugs which would have contributed to his physical and alleged mental state. Claimant was able to answer all the questions at the hearing and was responsive to all the questions. Claimant was oriented to time and place during the hearing. Claimant's complaints of pain, while profound and incredible, are out of proportion to the objective medical evidence contained in the file as it relates to claimant's ability to perform work. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity. 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 or sedentary work even with his impairments. Under the

Medical-Vocational guidelines, a younger individual (age 25), with a more than high school education and an unskilled work history, who is limited to light work is not considered disabled.

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. PEM, 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 light or sedentary work even with his impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.

/s/ \_\_\_\_\_  
Landis Y. Lain  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: February 3, 2009

Date Mailed: February 4, 2009

**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 receipt 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.

LYL/om

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