

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: 2009-27912

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

October 14, 2009

Oakland 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 October 14, 2009. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED] Claimant's [REDACTED] also 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 May 30, 2008, claimant filed an application for Medical Assistance, State Disability Assistance and retroactive Medical Assistance benefits alleging disability.

(2) On April 2, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work and that his impairments were nonexertional.

(3) On May 1, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On May 20, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On July 8, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of light work per 20 CFR 416.967(b) and unskilled work per 20 CFR 416.968(a) pursuant to Medical Vocational Rule 202.20, and stated in its comments:

The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of light work. Therefore, based on the claimant's vocational profile of a younger individual with a high school education, MA-P is denied using Vocational Rule 202.20 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above-stated level for 90 days.

(6) The hearing was held on October 14, 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 on February 11, 2010.

(8) On February 24, 2010, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing work and is restricted from working

around unprotected heights and dangerous machinery and could perform medium work per 20 CFR 416.967(c) and unskilled work per 20 CFR 416.968(a) pursuant to Medical Vocational Rule 203.28.

(9) The claimant is a 45-year-old man whose birth date is [REDACTED]. Claimant is 5' 11" tall and weighs 190 pounds. Claimant attended two years of college and studied graphic illustration and stated that he does have a hard time reading on the computer, but does have basic math skills.

(10) Claimant last worked approximately three to four years before the hearing doing hardwood refinishing and installing refinished products. Claimant has also worked making burgers in fast food places and doing air brushing of cars.

(11) Claimant alleges as disabling impairments: bi-polar disorder, closed head injury, and seizures, as well as left foot numbness, memory impairment and neuropathy in both hands. Claimant also testified that he does have migraines and had two motor vehicle accidents, one in 2007 and one in 2009. Claimant testified that he does take 30 pills per day.

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 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 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).

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 has not worked since approximately 2006; therefore, claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates an October 29, 2008 Medical Examination Report indicates that claimant fell in 2007 on a wet floor at [REDACTED] and hit his head. Patient stated that he was on life support for two days and stated that he had short term and long term memory loss. The medical examination report indicates that claimant appeared to be well-nourished and well-developed and in no acute distress. His lungs were clear to auscultation. Cardiovascular: He had normal S1 and S2 with no rubs, murmurs or gallops. In the abdomen, the bowel sounds were normal. The abdomen was not distended and was soft with no tenderness. Mental status: Patient is awake and alert, oriented x3, and attention span, recall, speech and language functions are normal. Cranial nerves are intact when checked for II-XII cranial nerves. Fundoscopy is normal. Pupils are equal and reactive to light. Extraocular movements are full. No nystagmus seen. Sensation on the face is normal. Power in facial muscles is normal. Gag reflex is intact. Uvula is midline. Tongue protrudes in midline. Patient had some stiffness at both upper extremity joints. Deep tendon reflexes are blank bilaterally. Sensory examination: Examination shows no abnormalities to touch, pain, and joint position and vibration senses normal. The cerebellar is normal. Gait and stance were slow. Claimant could use a cane. The range of motion of the cervical spine is normal. Lumbosacral spine is normal. The lower thoracic spine is normal. Straight leg raising is normal bilaterally. Tenderness is negative. His diagnosis

was status-post closed head injury, post-traumatic seizure and post-traumatic head injury.
(October 29, 2008, Medical Report, page 2)

An April 23, 2009 therapeutic drug monitoring scan indicates that claimant has sub-therapeutic Dilantin levels.

A February 5, 2009 evaluation indicates that claimant was 5' 11" tall and weighed 202 pounds. He was appropriately dressed. He was pleasant in the way that he related to examiner. There were no indicates of any pathological thinking or behavior. It is questionable whether he has severe brain damage. He may have a mild impairment of his memory. His thinking was coherent. He was able to integrate material. He has no problems in socializing and maintaining meaningful relationships. During the interview, he did not appear to be depressed or anxious. He showed no indication of being paranoid or having obsessional thinking. He has not isolated himself. His affect is appropriate. He was comfortable throughout the interview. The patient understands that working is important. He expects to return back to work with rehabilitation to a level of work that requires him to use his hands. (Page 8) The patient indicated during the interview that he is not depressed except for occasional moments of depression in spirit. Otherwise, he believes that he is functioning well. The claimant gave the date as February 6, 2009. For the location, he stated that he was in a doctor's office and he was able to state four numbers forward and four numbers backward. He was able to recall one or two objects. For the last few presidents, he gave Abraham Lincoln, George Washington, Nixon, and Obama. For his birth date, he stated [REDACTED] For five large cities, he gave: Detroit, Cincinnati, Dallas, Pittsburg and Milwaukee. For famous living people, he Clint Eastwood, [REDACTED] he saw at a friend's house, my neighbor. His friend's name was [REDACTED] For current events, he said the big car companies need money and they asked the government for money, but that these banks were

(inaudible) asking the government for money. For calculations, he was unable to do serial 7's but was able to do simple calculations. For abstract reasoning, to the proverb about the grass being greener on the other side of the fence, he said, "Stuff always looks better with the other guy." To the proverb about the spilled milk, he said it means, "don't whine about things you can't do anything about." For similarities and differences, he said, "a bush and a tree are alike because they're both plants," and he said that they were different because "one is bigger than the other." (Page 9) If he were given an envelope, he would "pick it up and throw it in the mailbox." If he were the first one to see a fire in a movie, he would "get out." He was diagnosed with personality disorder and a GAF of 60. His prognosis was that he does not have a mental disorder which keeps him from working. (Page 10)

A February 2, 2009 MRI indicates that diffusion rated images show no evidence of restricted diffusion abnormalities to suggest acute stroke or bleed. Cortical volume is normal. There is extensive signal abnormality seen in the vertex in the left and right frontal lobes and parietal lobes. This is involving gray and white matter and is best seen on Series 701, Image 20, and Series 701, Image 19. Further signal abnormalities are seen in the occipital lobes bilaterally. These changes are best seen on flair images as increased signal and in a patient of this age, these are most likely due to chronic head injury and contusions. The lateral ventricles are normal. Third and fourth ventricles are midline. The rest of the subarachnoid system is within normal limits. Normal vascular flow voids are seen. The sella and parasellar regions are normal. The craniocervical junction is normal. The calvarium, skull base and soft tissues of the scalp are normal. The impression was signal abnormalities in the bi-frontal and bi-parietal lobes and in the occipital lobes bilaterally.

An October 28, 2008, electroencephalograph report indicates that the patient is awake and drowsy during the study and the background activity consisted of medium voltage, poorly regulated 5-6 Hz, seen posteriorially. Alpha activity is not seen at any time. Low voltage fast frequencies are seen anteriorally. Bilateral anterior temporal small spikes are seen intermittently. Hyperventilation does not produce any abnormal changes. The impression is that this study is abnormal for moderate diffuse cortical disturbance and subcortical disturbance with mild paroxysmal features. Clinical correlation was recommended.

A physical examination, conducted May 27, 2008, indicates that claimant's blood pressure was 160/80, his pulse was 80, and his weight was 187.8 pounds. Neurologically: The pupils were 4 cm, equal and reactive. Extraocular movements were intact and without nystagmus or ptosis. The disks were shape and with normal color. Visual fields were full to confrontation testing. Facial movement and sensation was normal. Hearing was intact. The finger rub was intact but decreased in the right ear per patient. Tongue and pallet moved normally. He has no drift, tremor or dysmetria. Fine finger and rapid alternating movements were performing manually. He has no weakness distally or proximally in the upper extremities. He reports decreased pin prick to the left fourth finger and splits the fourth finger consistent with an ulnar distribution for sensation. The APB muscle is strong in the right hand. He reports that pin prick is decreased in the left foot; although it is clearly intact and he can distinguish shape versus dull with his eyes closed. Position and vibration were intact in both feet. The deep tendon reflexes were 2+ and symmetric at the biceps, wrists, triceps, knees and ankles. Plantar responses were down-going. His gait was normal including walking with his toes and toes, tandem and Romberg. He was assessed with a seizure disorder and numbness in the left arm, left leg and

right hand. (Page 29) This Administrative Law Judge did read the entire medical packet, which included over 700 pages of medical records.

A May 8, 2008 medical assessment report indicates that claimant was using alcohol on a daily basis and smoking with no history of drug abuse. His blood pressure was 198/96 and his heart rate was 110 per minutes, respiratory rate was 20, oxygen saturation was 95% of room air. The patient was alert and oriented x3. No jugular or venous distension in the neck. No neck vein pulsations. No thyromegaly. The chest was clear to auscultation with no wheezing or crackles. The heart had normal S1 and S2, no S3, no S4, no gallops or rubs. The abdomen was soft, non-distended, no tenderness, no guarding with normal bowel sounds. Peripheral vascular system had no cyanosis and no edema. Laboratory data indicated a hemoglobin of 15.3, hematocrit of 42, platelet count of 185. Rapid urine drug screen positive for cannabinoids. The CT of the head and neck was negative for radiology and negative for any kind of fracture. Claimant was assessed with a seizure disorder, most likely secondary to ETOH withdrawal versus uncontrolled hypertension. (Page 84)

At Step 2, claimant has the burden of proof of establishing that he has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. Although the claimant did have a closed head injury in a severe car accident, there is insufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment that has lasted or is expected to last for a period of 12 months or keeps him from working for a period of 12 months. Claimant has reports of pain in multiple areas of his body; however, there are insufficient objective corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or

injury that is consistent with a deteriorating condition. In short, claimant has restricted himself from tasks associated with occupational functioning based upon his reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that claimant has met the evidentiary burden of proof can be made. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

There is insufficient objective medical/psychiatric evidence in the record indicating that claimant suffers severe mental limitations resulting from his reportedly depressed state. Claimant also testified that he does have some memory problems. However, the evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. Claimant was able to answer all of the questions at the hearing and was responsive to the questions. Claimant was oriented to time, person and place during the hearing. For these reasons, this Administrative Law Judge finds that claimant has failed to meet his burden of proof at Step 2. The claimant must be denied benefits at this step based upon his failure to meet the evidentiary burden.

If claimant had not 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 federal 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 past relevant work was light work in the form of making burgers at a fast food place, air brushing, or refinishing and installing hardwood. There is insufficient objective medical evidence upon which this Administrative Law Judge could base a finding that claimant is unable

to perform work which he has engaged in, in the past. Therefore, if claimant had not already been denied at Step 2, he would be denied again 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 the 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).

Claimant has submitted insufficient objective medical evidence that he lacks the residual functional capacity to perform some other less strenuous tasks than in his prior employment or that he is physically unable to do light or sedentary tasks if demanded 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. Claimant has failed to provide the necessary objective medical evidence to establish that he has a severe impairment or combination of impairments which prevent him from performing any level of work for a period of 12 months. The claimant's testimony as to his limitations indicates that he should be able to perform light or sedentary work.

The Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) 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 DAA to a person's disability.

When the record contains evidence of DAA, 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 the drugs or alcohol and whether any of these remaining limitations would be disabling.

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 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 the claimant does not meet the statutory disability definition under the authority of the DA&A legislation because his substance abuse is material to his alleged impairments and alleged disability.

Claimant testified that he does continue to smoke a pack of cigarettes per day and that his doctor has told him to quit and he does plan to be in a smoking cessation program. Claimant also has some cannabinoid positives in his medical reports which indicate that he was not truthful when he stated that he no longer smokes marijuana and quit in his 20's. Therefore, this Administrative Law Judge finds that claimant's testimony is not credible.

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 claimant has had heavy use of alcohol as well as alcohol withdrawal, which would have contributed to his physical and any alleged mental problems.

Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to claimant's ability to perform work. Claimant was able to answer all the questions at the hearing and was responsive to the questions. Claimant was oriented to time, person and place during the hearing. 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 45), with a 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. 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.

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 this case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.

Adm
Departm

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

Date Signed: June 02, 2010

Date Mailed: June 3, 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.

LYL/cv

cc:

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