

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: 2009-28129
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 25, 2009
Genesee 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, an in-person hearing was held on August 25, 2009. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED]

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and retroactive Medical Assistance (retro MA-P)?

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 December 29, 2008, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.

(2) On February 26, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On March 4, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On June 3, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On July 14, 2009, the State Hearing Review Team again denied claimant's application stating that claimant's impairments lacked duration per 20 CFR 416.909.

(6) Claimant is a 49-year-old man whose birth date is [REDACTED]. Claimant is 5' 7" tall and weighs 148 pounds. Claimant attended the 10th grade and has no GED. Claimant is able to read and write and do addition, subtraction, simple division, multiplication and count money.

(7) Claimant last worked January 2003 for [REDACTED] a team leader where he worked for approximately 25 years. The claimant served in prison from [REDACTED].

(8) Claimant alleges as disabling impairments: coronary artery disease, double bypass in [REDACTED], hypertension, bad bunions, chest pain, headaches, a cut on his right wrist because his had his artery removed for the bypass, bipolar disorder, depression, suicidal, homicidal and paranoid thoughts, and a need for a heart catheterization.

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 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 has not worked since 2003. Claimant is not disqualified from receiving disability at Step 1.

It should be noted for the record that as of July 14, 2009 the Social Security Administration denied claimant's request for Retirement, Survivor's and Disability Insurance stating: We have determined that your condition was not disabling on any date through December 31, 2008 when you were last insured for disability benefits. In deciding this we have studied your records including the medical evidence and your statements and considering your age, education, training, and work experience in determining how your condition affected your ability to work. You said that you were disabled because of blocked arteries and double bypass surgery. This letter is to inform you of the decision that has been made regarding your application for Social Security Disability benefits. While we have been able to determine that you have impairing conditions that affect your ability to perform some tasks, we have been unable to show that these conditions were of a severe enough nature prior to the loss of your

insured status with the Social Security Administration to be considered disabling. We believe that prior to the loss of your insured status, that you would have retained the ability to remain gainfully employed in a wide variety of light, exertional tasks which could be learned in a short period of time. Therefore, this portion of your application is denied at this time.

The objective medical evidence on the record indicates that on physical examination of [REDACTED], claimant was a well-developed, well-nourished male in no obvious distress. The claimant was alert, affable, well-oriented, and cooperative. Affect, dress, and effort were all appropriate. The claimant's immediate, recent, and remote memory was intact with normal concentration. The claimant's insight and judgment were both appropriate. Blood pressure in the left arm was 140/86. Pulse was 80 and regular. Respiratory rate was 16. Weight was 151 pounds. Height was 67" without shoes. Skin was normal other than a long presternal scar. In the eyes and ears his visual acuity in the right eye was 20/50 and in the left eye was 20/40 without corrective lenses. Pupils were equal, round, and reactive to light. The claimant could hear conversational speech without limitation or aid. The neck was supple without apparent masses. In the chest breath sounds were clear to auscultation and symmetrical. There was no accessory muscle use. In the heart there was regular rate and rhythm without enlargement. There was a normal S1 and S2. The presternal area was tender. In the abdomen there was no apparent organomegaly or masses. In the vascular there was no clubbing, cyanosis, or edema detected. The peripheral pulses were intact. Musculoskeletally, there was no evidence of joint laxity, crepitation, or effusion. There was full fist and full grip strength bilaterally. Dexterity was unimpaired. The claimant could pick up a coin, button clothing, and open a door. The claimant had no difficulty getting on and off the examination table, no difficulty heel and toe walking, no difficulty squatting, and no difficulty hopping. Range of motion studies of the joints was full. Neurologically, cranial nerves were

intact. Motor strength was normal and tone appeared normal. Sensory was intact to light touch and pinprick. Reflexes were 2+ and symmetrical. Romberg testing was negative. Straight leg raising was accomplished to 90 degrees bilaterally. The claimant walked with a normal gait without the use of an assistive device. The conclusion was that claimant was status post two vessel coronary artery bypass grafting in [REDACTED]. The intra and post operative courses were successful. The cardiac examination was unremarkable. He was asymptomatic at that time. It was simply determined that his criminal record probably precludes further employment. (pp. A22-23)

A Medical Examination Report in the file indicates that the clinical impression was that the claimant's condition was stable and that he could never lift any weight but could sit about six hours in an eight-hour day and operate foot and leg controls with both feet legs and do simple grasping, reaching, pushing/pulling, and fine manipulating with his upper extremities as of [REDACTED]. (p. 10) A Medical Examination Report indicates that claimant was normal in all areas of examination as of [REDACTED]. His blood pressure was 152/92. (p. 9)

A [REDACTED] psychiatric report of [REDACTED] indicates that claimant was casually dressed and his hygiene and grooming were appropriate. He did not require assistance in scheduling and keeping appointments. He was able to find locations independently. He seemed to be in contact with reality throughout the examination. His posture and motor activity seemed to be normal. Claimant described problems walking because of foot problems. Claimant reported being unable to walk longer than one block. Claimant did not seem to exaggerate or minimize symptoms. Claimant's self-esteem was described as low and not good. Claimant's speech was unimpaired. His stream of mental activity was spontaneous and organized. His affect was appropriate to mood. Claimant reported generally feeling really down

and depressed and he saw no way out. His mood appeared depressed during the entire exam. Claimant appeared to be oriented to time, place, and person. His immediate memory of numbers forward was at least five and backward it was two. He recalled three objects three minutes after he was told them. He stated the past presidents were Clinton and Bush and his birth date was correctly identified as [REDACTED]. He gave information that the current president was Bush and three large cities were Detroit, New York, and Chicago. Two current famous people were Barbara Walters and Soledad O'Brien and he stated that he didn't watch the news. His calculations were $3+4=6$, $3+5=9$ or 8 , $6-2=4$, $8-5=3$, $3 \times 4=12$, and $10/2=5$. He seemed to intentionally underrepresent his abilities on mathematical tasks. His performance on these tasks as well as his poor performance on digit span casts doubt on his credibility throughout the examination. This fact combined with the lack of mental health records available made the conclusions more tentative. The abstract thinking, "the grass always looks greener on the other side of fence" he stated you always think something is better than what you have and "don't count your chickens before they hatch" he stated don't count on anything. Similarities and differences when asked in what way are a bush and a tree alike he stated that both grow in the ground and that they were different because a tree is a tree and a bush is a bush. If he saw a fire in a theater he would yell run. The psychologist indicated that claimant was underrepresenting his abilities at times during the examination and he reported that he has psychiatrically hospitalized many times for hearing voices and suicidal behavior but no psychiatric records were available to the psychologist at the time of the determination. The psychologist determined that the claimant's mental abilities to understand, remember, and carry out instructions were only mildly impaired. His ability to respond appropriately to co-workers and supervision and to adapt to change and stress in the workplace were moderately impaired. The psychologist indicated that

the impression was that claimant's psychological condition would moderately impair his ability to perform work-related activities and he was diagnosed with major depressive disorder, marijuana dependence, a history of cocaine abuse, as well as heart problems. His current GAF was 52. His prognosis was poor without medication but fair with medication, and he was able to manage his benefit funds. (pp. 2-4)

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. There is insufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant has reports of pain in multiple areas of his body; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. In fact, claimant's medical reports indicate that his condition was basically normal at this time.

Claimant testified on the record that he does cook 3-4 times per week and cooks things like hamburgers, hotdogs, and TV dinners. The claimant does grocery shop one time per month and his cousin helps him pick out the groceries. Claimant testified that he does vacuum and do dishes. Claimant testified that he can walk 100 yards but it is painful on his left side and hip. Claimant testified that he can stand for 15-20 minutes and that he can sit forever. Claimant is able to shower and dress himself, squat, tie his shoes, and touch his toes, but bending at the waist is hard because it pulls at his hip. Claimant testified that the heaviest weight he can carry is 25 pounds and he can carry a gallon of milk repetitively. Claimant testified that he is left-handed and that his left hand is fine and that he had surgery on his right wrist in 2008 for the bypass. Claimant stated that his pain on a scale from 1 to 10 without medication is a 9 and with medication is a 6/7. Claimant testified that he does continue to smoke two cigarettes a day and

his doctor has told him to quit and he is not in a smoking cessation program. Claimant testified that he does continue to drink six beers per week and his doctor has told him to quit drinking. Claimant testified that he does continue to smoke marijuana.

The clinical impression in this case is that claimant is normal. 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, the 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 claimant suffers mental limitations resulting from his reportedly depressed or bipolar state.

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).

The Mental Residual Functional Capacity Assessment in the record indicates that claimant may only be moderately impaired in some areas. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. 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. For these reasons, this Administrative Law

Judge finds that claimant has failed to meet his burden of proof at Step 2. 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 did work for [REDACTED] for approximately 25 years before he went to prison. Claimant's past relevant work was light work. There is no 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 again be denied 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).

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. 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 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 DA&A Legislation because his substance abuse is material to his alleged impairment and alleged disability. Claimant does continue to smoke, drink, and smoke weed (marijuana) despite the fact that his doctor has told him to quit.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial gainful activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

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. 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.

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 and retroactive Medical 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: October 15, 2009

Date Mailed: October 15, 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.

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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/vmc

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