

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: 2009-33270
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
December 17, 2009
Clinton 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 December 17, 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 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 January 5, 2009, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.
- (2) On April 20, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On April 24, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On July 21, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On August 31, 2009, the State Hearing Review Team denied claimant's application stating in its analysis and recommendation:

The claimant had a history of alcohol abuse. He had severe cellulites of the left lower extremity in December 2008 and still has some swelling from the knee down in March 2009. He was able to ambulate without assistance, but had a slightly antalgic gait. There was no loss of strength. The claimant would be able to do simple, unskilled light work. Public Law 104-121 is cited due to the materiality of the drug and alcohol abuse. 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 simple, unskilled light work. In lieu of detailed work history, the claimant will be returned to other work. Therefore, based on the claimant's vocational profile of closely approaching age at 53, 14 years of education and an unknown work history, MA-P is denied using Vocational Rule 202.13 as a guide. Retroactive MA-P was considered in this case and is also denied.

(6) The hearing was held on December 17, 2009. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(7) Additional medical information was received and submitted to the State Hearing Review Team on January 4, 2010.

(8) On January 9, 2010, the State Hearing Review Team again denied claimant's application stating that the claimant is capable of performing other work in the form of medium work per 20 CFR 416.967(c) and unskilled work per 20 CFR 416.968(a) and pursuant to Medical Vocational Rule 203.22.

(9) On January 22, 2010, the claimant's representative sent in additional new information, which was sent to the State Hearing Review Team for further review on January 22, 2010.

(10) On January 26, 2010, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of medium work per 20 CFR 416.967(c), unskilled work per 20 CFR 416.968(a) and pursuant to Medical Vocational Rule 203.22.

(11) Claimant is a 53-year-old man whose birth date is [REDACTED] Claimant is 5' 11" tall and weighs 195 pounds. Claimant is a high school graduate and has 60 college credits in psychology. Claimant is able to read and write and does have basic math skills.

(12) Claimant last worked in 1997 as a newspaper carrier. Claimant also worked in the [REDACTED] as an income tax mailroom temporary and also worked for the [REDACTED] as a clerk and doing cost estimates for boats.

(13) Claimant receives Food Assistance Program benefits in the Adult Medical Program.

(14) Claimant alleges as disabling impairments: cellulites and anxiety as well as left leg inflammation, pinched nerve in his neck, a swollen knee, and liver disease maybe hepatitis C.

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).

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 1997. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that the claimant was admitted in December 2008 due to alcohol withdrawal seizures. He also has severe cellulites of the lower left extremity (page 34). In March 2009, the claimant reported he had stopped drinking about a year ago (page 15). He ambulated with a slightly antalgic gait, favoring the left side. His abdominal examination was normal. He did have some swelling of the left lower extremity from the knee downward. He had some bony enlargement of the left knee and some tenderness. He had decreased range of motion of the knee. Neurological findings were normal (page 16).

An emergency room report of December 30, 2008, indicates that venous Doppler was obtained of the lower extremity to rule out phlegmasia. This was normal. He was admitted for severe cellulites of the lower left extremity and left the emergency department in stable condition (page C2).

A medical examination report of June 6, 2009, indicates claimant's temperature was 98 degrees; blood pressure was 122/59, pulse oxymetry 97% of room air, heart rate 95, respiratory rate 16. During the examination, no significant distress. Patient was smelling of fecal matter, although he had been cleaned a couple hours ago. Appears not well kept and poorly nourished. He does have a smell of alcohol from his breath. Skin with normal skin turgor. There was a rash, erythematous with excoriation and scaling seen on the face as well as on the mid chest area. HEENT: Eyes were anicteric. Pupils equal, reactive to light and accommodation. EENT and mouth dry mucosa. No pharyngeal erythema. In the neck, there was no neck stiffness. No thyroid enlargement. Respiratory examination, no respiratory distress. Lungs clear to auscultation. Cardiovascular examination, S1 and S2 were normal. Regular rate and rhythm. No edema or varicose veins. No murmurs, rubs or gallops present. Gastrointestinal examination: There was no

abdominal tenderness, no hepatosplenomegaly. Normal bowel sounds. Genital/urinary examination: no CVA, tenderness. Bladder not distended. Musculoskeletal examination: no muscle wasting, normal joint exam. Neurological examination: cranial nerves III- XII are grossly intact with no gross sensory deficits. No tremors. Strength positive. 5/5 in both lower and upper extremities. Reflexes 2/4. No asterixis. Psychiatric examination: Alert, oriented to time, place and person. Normal insight. Depressed affect detected. ETOH 0.312. The assessment was claimant had alcohol intoxication. He has been an avid alcohol abuser as well as dependent. He has two detox programs that he has tried in the past. He was on ETOH withdrawal protocol, with alcoholic hepatitis. His AST was greater than ALT. He had mild hyperbilirubinemia.

(Page 36, 38).

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 a 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 was admitted to the hospital based upon severe intoxication and he had drank so much alcohol that he had developed cellulites and had let it go so far that his leg was swollen to twice its size. However, upon discharge from the hospital, the problem had resolved.

A medical examination report in the file by Family Practice from January 23, 2009, indicates that claimant was basically normal in most areas of examination. He had mild ataxia and depression, and his left leg was swollen because of cellulites. His weight was 204 pounds and his blood pressure was 128/74, and he is right-hand dominant. The clinical impression was that he was deteriorating and that he did not need any assistive device for ambulation. He couldn't use either foot or leg for operating foot/leg controls. There is no indication of how far he could walk, or how long he could stand, walk or sit, or how much weight he could lift or whether

he could use his upper extremities. He has some limitations in comprehension and memory (Pages 25, 26).

There are no medical findings that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. Although he does have some degenerative changes in his knee, he does not need assistive devices for ambulation. In short, the DHS-49 Medical Examination Report has restricted claimant from tasks associated with occupational functioning based upon claimant's 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.

Claimant testified on the record that he does have anxiety, but that he has calmed down some. The medical reports indicate that claimant did have some depression.

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 in the record indicating claimant suffers mental limitations resulting from his reportedly depressed or anxious state. There is no mental residual functional capacity assessment in the record. Claimant was oriented to time, person and place during the hearing. Claimant was able to answer all the questions at the hearing and was responsive to the questions. In the mental status examinations in the file, claimant was oriented to time, person and place and had no mental limitations. The evidentiary

record is insufficient to find that claimant suffers a severely restrictive mental impairment. 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's past relevant work was light work. As a mailroom clerk or an estimator for boats does not require strenuous physical exertion, there is insufficient objective medical evidence upon which this Administrative Law Judge can base a finding that claimant is unable to do 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 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. Claimant testified that he can cook in the microwave and he cooks things like soups and sandwiches, and that he does have a driver's license and drives three times per week and drives about 10 miles. Claimant testified that he does grocery shop about one time per week and uses a scooter, and that he cleans the bathroom and carpet and polishes. Claimant testified he does the outside lawn with a riding lawnmower and that he collects baseball cards and reads a lot. Claimant testified that he can stand for 15 minutes, sit for 2 hours at a time with his foot elevated, walk ½ a block without a cane or a

walker, and that he is able to squat, bend at the waist, shower and dress himself, and tie his shoes but not touch his toes. Claimant testified that his level of pain on a scale from 1 to 10 without medication is an 8, and with medication is a 5, and that he is right-handed and his hands and arms are fine. Claimant testified that he can carry 20 to 30 pounds, and repetitively 15 to 20 pounds. Claimant testified that he has been alcohol free for eight months, and he used to be a binge drinker and drink about ½ a pint of whiskey per day for 7 to 8 years. Claimant testified that he hasn't smoked pot since the 1970's. Claimant testified that on a typical day he reads the Bible, has breakfast, watches television, does chores, and lies down and elevates his foot. Claimant testified that he is no longer fatigued because he quit drinking, and he usually sleeps two hours. He has interrupted sleep, but he doesn't take naps.

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 drug 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 even if the claimant were to be determined disabled, he does not meet the statutory disability definition under the authority of the DA&A legislation because his substance abuse was material to his alleged impairments and alleged disability. There is insufficient objective medical evidence contained in the file of depression or 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 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. 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 this 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

Admin
Department

Date Signed: May 24, 2010

Date Mailed: May 25, 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:

