

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: 2009-36306

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

November 12, 2009

Wayne 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 November 12, 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), retroactive Medical Assistance 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 8, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On July 23, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical Vocational Rule 202.13.

(3) On July 29, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On August 10, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On September 29, 2009, the State Hearing Review Team denied claimant's application stating that it had insufficient evidence and requested an independent consultative psychiatric examination in narrative form to include a mental status examination and an observation of exaggerated symptoms or malingering.

(6) The hearing was held on November 12, 2009. At the hearing, claimant waived the time periods and requested to submit additional medical information and agreed to attend the psychiatric evaluation.

(7) A medical appointment was set up for claimant for Thursday, February 25, 2010, at 9:15 a.m.

(8) Claimant failed to attend the psychiatric appointment on Thursday, February 25, 2010, at 9:15 a.m.

(9) Notice of the medical appointment was sent to claimant on February 8, 2010. The notice was not returned to the department as undeliverable and it was sent to claimant's address at: [REDACTED]

(10) This Administrative Law Judge, therefore, closed the record and proceeded to the decision without the psychiatric evaluation because claimant failed to attend the medical appointment.

(11) On the date of hearing, claimant was a 55-year-old man whose birth date is [REDACTED]. Claimant is 5' 9" tall and weighed 135 pounds. Claimant attended 1 ½ years of college and studied business administration and accounting, and is able to read and write and does have basic math skills.

(12) Claimant last worked in 2007 for [REDACTED] as a tutor and a mentor. Claimant has also worked doing industrial work, as a typist and word processor for the [REDACTED] and doing key punching.

(13) Claimant alleges as disabling impairments: hepatitis C, carpal tunnel syndrome, back pain, depression, schizophrenia, as well as infection in the arm, missing the top of one finger, and the first two digits on the right hand were amputated.

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 2007. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that on June 17, 2009, claimant came in for a medication review and update. He had missed his appointment the month before.

He went to the Detroit [REDACTED] and was given medication for two weeks and then ran out. He stated that he wasn't doing well, and when he doesn't take his medication that he hears voices all day long unless he takes his [REDACTED] as ordered. He was feeling a little depressed because his medical insurance was discontinued. He spends his time reading, watching TV, visiting with his daughters and grandchildren. He denied substance abuse. Claimant's appearance and behavior were alert, well groomed and cooperative. His affect and mood were constricted, and sad. His motivation to treatment was strong. His risk assessment indicated that he had no suicidal or homicidal thoughts, urges or plan, or attempt. He did not have history of self-mutilation, present or past. His speech and progression of thought was spontaneous, coherent, productive and logical. Perception: he indicated that he had auditory hallucination His appetite was good, he didn't have any weight gain. Memory: He had intact remote memory, recent memory and immediate recall memory. He stated that the recent presidents were Obama, Bush and Bush. Names of large cities were Detroit, Los Angeles, Atlanta, Chicago, and Cleveland. For current events, he stated the city hall and a little girl was found dead. He said a quarter, a nickel and a dime added up to 40 cents. He stated 3 plus 2 equals 5, 4 times 5 equals 20. He stated a bush and a tree were similar because they both had leaves and branches, and that they were different in size. His insight was good. His decision-making was fair. His impulse control was intact. He could remember 4 or out 5 digits forward and 3 out of 5 digits backward. He was able to handle his own funds. His prognosis was given as good or fair with treatment. His GAF was 48. He was diagnosed with schizoaffective disorder and academic problems.

A [REDACTED] physical examination, dated July 11, 2009, indicates that claimant was well-developed, well-nourished, cooperative and in no acute distress. The claimant was awake, alert and oriented x3. He was dressed appropriately and answered questions fairly

well. His height was 5' 7" tall and his weight was 136 pounds. His pulse was 80, respiratory rate 18, blood pressure 120/80. Visual acuity without glasses was 20/25 bilaterally. His HEENT was normocephalic/atraumatic. Eyes: the lids were normal. There was no exophthalmos, icterus, conjunctiva, erythema or exudates noted. PERRL, extraocular movements intact. Ears: no discharge in the external auditory canals. No bulging erythema, perforation of the tympanic membrane noted. Nose: there was no septal deformity, epistaxis or rhinorrhea. Mouth: the teeth are in fair repair. Neck was supple. No JVD noted. No tracheal deviation. No lymphadenopathy. Thyroid is not visible or palpable. ENT external impression of the ears and nose revealed no evidence of acute abnormalities. In the respiratory system, the chest was symmetrical and equal to expansion. The lung fields were clear to auscultation and percussion bilaterally. There were no rales, rhonchi or wheezes noted. No retractions noted. No accessory muscle usage noted, no cyanosis noted. There was no cough. Cardiovascular: Normal sinus rhythm, S1 and S2, no rubs, murmur or gallops. In the gastrointestinal area: soft, benign, non-distended, non-tender with no guarding, rebound, palpable masses. Bowel sounds were present. The liver and spleen are not palpable. The skin had no significant rashes or ulcers. In the extremities, he was missing digits of the tip of his right index finger and right middle finger. There were no obvious spinal deformity, swelling or muscle spasm noted. Pedal pulses are 2+ bilaterally. There was no calf tenderness, clubbing, edema, varicose veins, brawny erythema, stasis, dermatitis, chronic leg ulcers and muscle atrophy, joint deformity, or enlargement noted. In the bones and joints, the examinee does not use a cane or aid for walking. He was able to get off and on the table without difficulty. Gait and stance are normal. Tandem walk, heel walk and toe walk are done without difficulty. He was able to squat to 50% of the distance and recover and bend to 90% of the distance and recover. Grip strength is 4/5 on the right and 5/5 on the left. The examinee is right-handed. Gross and fine dexterity appear bilaterally intact. Abduction of

the shoulders is 0 to 150 degrees. Flexion of the knees is 0 to 150 degrees. Straight leg raising while lying is 0 to 50 degrees, while sitting is 0 to 90 degrees. Neurological: In general, the claimant is alert, awake and oriented to person, place and time. Cranial nerve II, vision as stated in vital signs. III, IV and VI, no ptosis, nystagmus. PERRLA: pupils 2 mm bilaterally. V, no facial numbness, symmetrical response to stimuli. VII, symmetrical facial movements noted. VIII, can hear normal conversation and whispered voice. IX and X, swallowing intact, gag reflex intact. Uvula, mid-line. XI, head and shoulder movement against resistance are equal. XII, no sign of tongue atrophy. No deviation with protrusion of tongue. Sensation function is intact to sharp and dull gross testing. Motor exam reveals fair muscle tone without flaccidity, spasticity or paralysis. He has decreased grip strength on the right. Cerebellar: Finger-to-nose test done very well. Impression: Depression. The examinee has a history of depression and is currently taking medication and is being followed by a mental health specialist; chronic back pain, the examinee has a history of chronic back pain and has a slipped disc in her lower lumbar area. He is taking Vicodin as needed for the pain. (Medical Report, pages 8, 9)

A medical examination report, dated May 5, 2009, indicates that claimant's clinical impression was that he is stable. He could frequently carry or lift 10 pounds and occasionally lift 20 to 25 pounds, but never lift 50 pounds or more. He could stand or walk for at least 2 hours in an 8-hour day, and sit less than 6 hours in an 8-hour workday. He could use his upper extremities for simple grasping, reaching, pushing and pulling, and fine manipulating; and he could operate foot and leg controls with both feet and legs. He had no mental limitations. He was normal in all areas of examination, except for in musculoskeletal where he had a positive SLR. He was 68" tall, weighed 138 pounds, and his blood pressure was 130/82. (Medical Report, pages 18, 19)

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; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. There are no laboratory or x-ray findings listed in the file. The clinical impression is that claimant is stable. 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.

Claimant alleges the following disabling mental impairments: schizophrenia and 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 severe mental limitations. There is a no mental residual functional capacity assessment in the record. Claimant failed to attend his psychiatric evaluation, which was set up for him. Therefore, claimant is in noncompliance with his treatment program. There is insufficient 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. Claimant was oriented to time,

person and place during the hearing. Claimant was able to answer all of the questions at the hearing and was responsive to the questions. 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. There is no evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work in 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 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.

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. 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. 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.

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 indicate that claimant has a history of tobacco and alcohol abuse. Applicable hearing is the Drug Abuse and Alcohol (DA&A) Legislation, Public Law 104-121, Section 105(b)(1), 110 STAT. 853, 42 USC 423(d)(2)(C), 1382(c)(a)(3)(J) Supplement Five 1999. The law indicates that individuals are not eligible and/or are 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 claimant does not meet the statutory disability definition under the authority of the DA&A Legislation because her substance abuse is material to her alleged impairment and alleged disability.

It should be noted that claimant continues to smoke despite the fact that her doctor has told her to quit. Claimant is not in compliance with her treatment program.

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).

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.

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that claimant was not eligible to receive Medical Assistance and/or State Disability Assistance.

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

