

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: 2009-6933

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 4, 2009

Calhoun 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 February 4, 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 June 20, 2008, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.

(2) On July 31, 2008, the Medical Review Team denied claimant's application stating that claimant's impairments lacked duration.

(3) On August 21, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On November 10, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On January 2, 2009, the State Hearing Review Team denied claimant's application stating that claimant is capable of performing other work in the form of unskilled work per 20 CFR 416.968(a) and commented that this may be consistent with past relevant work. However, there is no detailed description of past work to determine this.

(6) The hearing was held on February 4, 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 April 7, 2009.

(8) On April 21, 2009, the State Hearing Review Team again denied claimant's application stating that claimant's impairments lacked duration per 20 CFR 416.909 and commented that there is a history of polysubstance abuse. The claimant was admitted in [REDACTED] [REDACTED] due to self-inflicted puncture wounds. He had a chest tube at the time and walked out of the hospital. Subsequently, police had to take him back. This suicide attempt was made while under the influence of hallucinogenic mushrooms.

(9) Claimant is a 30-year-old man whose birth date is [REDACTED]. Claimant is 6' 1" tall and weighs 170 pounds. Claimant attended two years of college and studied veterinary technology. Claimant is able to read and write and does have basic math skills.

(10) Claimant last worked May 2008 for a survey company as a cartographer making blueprints for fiber optics. Claimant also worked at [REDACTED] as a salesperson and was a cook in a restaurant.

(11) Claimant alleges as disabling impairments: a nicked artery and scar tissue, a bipolar disorder, depression, suicidal thoughts, mood disorder, personality disorder, anxiety, heart problems, as well as a plural effusion.

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 May 2008. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that on [REDACTED] claimant was admitted with severe left chest pain of twelve hours duration. Pain worsened with deep breathing. His chest x-ray showed a large left plural effusion. Claimant was hospitalized for self-inflicted puncture wounds. Claimant required a chest tube and then he walked out of the hospital and the police then had to take him to [REDACTED]. The general physical examination showed that claimant was in a lot of pain. His vital signs were stable. His blood pressure was

slightly low at 89/69. Heart sounds were normal. Lungs had diminished breath sounds in the left side. His abdomen was soft. His white cell count was high at 18,800 and his hemoglobin was 10.4. Claimant was discharged on [REDACTED]. The mental residual functional capacity examination in the file indicates that claimant was markedly limited in many areas and moderately limited in others as of [REDACTED] and that he had polysubstance abuse and legal difficulties as well as self-inflicted stab wounds. Claimant was originally admitted to the hospital [REDACTED] because he stabbed himself with some rusty garden scissors when he was under the influence of marijuana and psychogenic mushrooms. He stabbed himself in the left shoulder region just above the area of the deltoid muscle as well as in the neck on both sides and in the abdominal region.

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 stab wounds and pain in multiple areas of his body; however, claimant did testify that he has no limits on his ability to walk, no limits on his ability to stand and no limits on his ability to sit. Claimant is able to shower and dress himself, bend at the waist, tie his shoes and touch his toes. The heaviest weight claimant can carry is 20 pounds and he can carry 5 to 10 pounds repetitively. Claimant is right handed and his hands and arms are fine. His legs and feet are fine. His level of pain on a scale from 1 to 10 without medication is a 5 and with medication is a 3. Claimant testified on the record that he used to take marijuana, do mushrooms, cocaine, heroin, ecstasy, DMT, ketamine and also methamphetamines and that he stopped using drugs in [REDACTED] but then had a relapse in [REDACTED] when he smoked weed one time.

This Administrative Law Judge finds that there is insufficient objective medical/psychiatric evidence in the file to indicate that claimant has a severely restrictive physical or mental impairment. Although claimant's condition was serious enough to be hospitalized in [REDACTED] and [REDACTED], he was under the influence originally of hallucinogenic mushrooms and then he left the hospital on his own volition and had to be taken back to the hospital. Once claimant was released, he was stable. Claimant was able to answer all the questions at the hearing and was oriented to time, person and place during the hearing. This Administrative Law Judge finds that claimant's impairments do not meet duration as he did stab himself in [REDACTED] and his physical impairments have healed and as long as he does not use drugs and stays on his medication, he is stable. 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 could work as a cook in a restaurant, could work for [REDACTED] as a salesperson or could work doing surveying cartography work even with him impairments. 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 no 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 activities of daily living do

not appear to be very limited as the claimant did testify on the record that he does cook two times a day and makes sandwiches and that he is able to grocery shop without help but he doesn't do it because his father does it for him. Claimant testified that he doesn't clean his home but he does do the dishes and that he likes to read as a hobby. Claimant testified that in a typical day he wakes up and gets something to eat and then he goes to a [REDACTED] meeting which his mother takes him to. Claimant sits and reads and then plays on the internet one to two hours a day. Claimant testified he watches television one hour a day or at night and that he does have daily suicidal thoughts and crying spells a few times a week and bouts of fear, he's afraid of life and everything. Claimant testified that he feels powerless and impotent and his left side is numb on exertion and he says he may need more surgery.

This Administrative Law Judge finds that claimant has failed to provide the necessary objective medical evidence to establish that he has a severe impairment of combination of impairments which prevent him for performing any level of work for a period of 12 months. Claimant's testimony is not consistent with the medical information contained in the file.

Claimant's testimony and the information contained in the file indicate that claimant has a history of drug abuse. Claimant testified that he did not stop using drugs until at least [REDACTED]. Applicable hearing is the Drug Abuse and Alcohol (DA&A) Legislation, Public Law 104-121, Section 105 (20 CFR 404.1535). The federal regulations indicate that a disability analysis be completed prior to the determination of whether a person's drug and alcohol use is material. It is only when a person meets the disability criteria as set forth in the regulations that the issue of materiality becomes relevant. In such cases, the regulations require six steps to determine the materiality of drug addiction and alcoholism to a person's disability. When the record contains evidence of drug addiction and alcoholism a determination must be made whether or not a

person will continue to be disabled if the individual stopped using drugs and alcohol. The trier-of-fact must determine what, if any, of the physical and mental limitations would remain if the person were to stop the use of drugs or alcohol and whether any of these remaining limitations would be disabling.

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 even if claimant did meet the disability standards under Steps 1 through 5, he would 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 on the record that he does have a bipolar disorder, suicidal thoughts, mood disorder 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 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 the claimant's medical reports, it is documented that he had heavy use of many different types of psychogenic drugs and illegal drugs which would have contributed to his physical and any alleged mental problems. The claimant was able to answer all

the questions at the hearing and was responsive to the questions. He was oriented to person, time 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. In addition, claimant did testify that he does receive some relief from his pain medication. 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 at least light or sedentary work even with his impairments. Under the Medical-Vocational a younger individual (age 30), with a more than high school education and an unskilled work history who is limited to light work is not considered disabled.

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 at least 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: May 13, 2009

Date Mailed: May 14, 2009

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the 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.

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