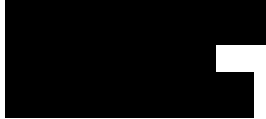


STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 2009-13078
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 30, 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 April 30, 2009. Claimant personally appeared and testified. The record for this hearing closed July 8, 2010.

ISSUE

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

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) On September 23, 2010, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On October 31, 2008, the Medical Review Team denied claimant could perform other work.
- (3) On December 6, 2008, the department caseworker sent claimant notice that his application was denied.
- (4) On January 22, 2009, claimant filed a request for a hearing to contest the department's negative action.
- (5) On February 20, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: claimant is capable of performing other work in the form of light work per

20 CFR 416.967(b), medium work per 20 CFR 416.967(c) , and unskilled work per 20 CFR 416.968(a) pursuant to Medical Vocational Rule 203.21 and 202.13 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 April 30, 2009. At the hearing, claimant waived the time periods and requested to submit additional medical information.
- (7) Additional medical information was not submitted and this Administrative Law Judge contacted the caseworker to determine if claimant had submitted any additional medical information and the caseworker responded on July 6, 2010, that she had not received any new information.
- (8) The hearing record was closed on July 8, 2010 by this Administrative Law Judge and this Administrative will proceed to a decision based upon the information contained in the file.
- (9) On the date of hearing, claimant is a 54-year-old man whose birth date is [REDACTED]. Claimant is 6' tall and weighs 206 pounds. Claimant attended Jr college and studied Social Work. Claimant is able to read and write and does have basic math skills.
- (10) Claimant last worked 7 years before the hearing toasting sandwiches and ribs and was laid. Claimant has also worked as a Social Worker and as a maintenance and grounds person and doing odd jobs.
- (11) Claimant alleges as disabling impairments: back pain, mental problems , bi-polar disorder, diabetes mellitus, scattered thoughts and memory problems.

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 in approximately 7 years. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant testified that he does have a chauffeurs license and is able to drive but he usually gets a ride and catches the bus and does it approximately 5 days per week and is usually on the bus for about 25 minutes. Claimant testified that he does cook one time per day and cooks things like hamburgers and pork chops and he does grocery shop 1 time per month with no help. Claimant testified that cleans his home by dusting, cleaning the tables and doing laundry and his hobby is reading. Claimant testified that he can walk 2 blocks, stand for 10 minutes, and sit for 45 minutes at a time. Claimant testified that he can shower and dress himself, bend at the waist, tie his shoes but not touch his toes or

squat because his back hurts. Claimant testified that the heaviest weight that he can carry is between 10 and 15 pounds and that he is right handed and his hands and arms are fine. Claimant testified that his legs and feet have some pain and his level of pain on a scale from 1-10 without medication is an 8 and with medication is a 4. Claimant testified that he used to smoke 10 cigarettes per day and he quit approximately a week before the hearing. Claimant testified that in a typical day he washes his face and gets dressed and waits for a ride and goes downtown for an hour to narcotics anonymous and alcoholics anonymous meeting and goes back home, watches TV and walks to the store 2 blocks. Claimant testified that he cooks, showers, eats and goes to bed.

A Sierra Group mental status examination dated October 13, 2008, indicates that the claimant was 6' tall and weighed 191 pounds. The claimant presented as being an adequate overt contact with reality with no evidence of an overt thought disorder. He answered questions in a logical and goal directed fashion for the most part. He reported hearing voices but does not recognize them. He said that they just really need stuff. He denied past or present suicidal thoughts, feeling or attempts. When asked about feeling that he has magical or unusual powers, he said that sometime he thinks he can read what people are getting ready to say. The claimant described himself as depressed and anxious most of the time stating that he feels rushed to do things. He can spell his first name and last name correctly and knew today's date. He gave the name of the office as Gabriel's Nest. He said that he lives a $\frac{3}{4}$ way home. He repeated 7 digits and 3 digits backward and when asked to say digits backward he said it will never happen. He repeated 3 of 3 objects immediately after I stated them to him. He could not recall any of the three objects, pencil, tee or a quarter after a delay of 3 minutes. Presidents in reverse order, W. George Bush, I can't remember the dates, Clinton, I don't remember. Information 5 large cities; L.A., Detroit, San Francisco, Milwaukee, New York. Current famous living people is Tom Cruise, Katie Holmes, Will Smith and Jada Pinkett. Current event were Amber Alert about that little girl and baseball. In calculations, serial 7's from 100; 93, I lost it I don't have it. $4+7=11$, $16-9=7$ I lost it, $4+6=24$, $42/7=6$ I lost it. In Abstract thinking, the grass is greener on the other side, he stated I don't know and don't cry over spilled milk he replied and said, no need in crying about what you don't have. Similarities and difference and how a bush and a tree are alike, both are plants. They are different because the bush is kind of small and a tree gets really big. In judgment, what would you do if you found a stamped addressed envelope, "drop it in the mail box." If you saw a fire in a theatre, I wouldn't holler and talk to people, I would try to get out of there. His plans for the future was to get that one missing class and finding employment somewhere. The claimant said that he has a really bad attitude and sometimes gets really angry. He said he used to like people but now not any longer. He again mentioned his short term memory being shot.

His diagnosis was poly substance abuse of alcohol, crack cocaine, and heroin in reported remission and depression. Mixed personality disorder with anti-social independent features and his axis GAF was 48. The prognosis was fair and he is not capable of managing his own benefits funds in light of his history of substance abuse. (pp. 8-9)

A October 13, 2008, medical report indicates that claimant was 6' tall and weighed 191 pounds and his pulse was 72, respiratory 16, blood pressure 90/64. HEENT : normocephalic. No alopecia. No lesions on the scalp. No facial weakness. Ears, the hearing was normal. Eyes, pupils were equal and reactive to light in accommodation. Sclera, was non-icteric. No conjunctivitis. Vision with eyeglasses is 20/30 on the right and 20/40 on the left. The neck had no adenopathy. No thyroid enlargement. No abnormal bruits. The heart had regular sinus rhythm. No arrhythmia, no murmur or gallop. The lungs were clear with no rales or wheezing. The abdomen had no tenderness or hernia. Extremities: in the musculoskeletal area there was no edema or phlebitis of the extremities. It was noted limitation on flexion and extension of the lumbar spine in also on examination of the hips but he did complain of some pain. He was able to stand, bend, and stoop. He had some pain on straight leg raising, which was limited to 75 degrees bilaterally. Sitting down, he had no problem. He could also walk on his toes and heels and on tandem. His gait was normal. Reflexes were intact. Grip strength was also normal. He showed multiple excoriations of the skin on his body, which he had been scratching. He attributed this to nerves. The impression was chronic lower back pain possibly degenerative of arthritis, hypertension controlled and type II diabetes. The medical source statement indicated that he should be able to do a part-time job but with limitations lifting. He is also able to do a sit down job with frequent standing and no prolonged walking. He would also benefit from psychiatric evaluation (pp. 11-12).

A medical examination report in the file indicates that claimant was normal in all areas of the examination except in the abdominal he had Hepatitis C and he has some lower back pain from an injury in 1999 L1-L2 herniation disc and pain withstanding. He was 6' tall and weighed 207 pounds and his blood pressure was 110/80 and the last date of the examination was January 17, 2008. The clinical impression is that claimant was stable and he had no physical limitations and he could frequently carry 10 pounds or less but never carry 20 pounds or more. He could stand or walk less than 2 hours in an 8 hour day and sit less than 6 hours in an 8 hour work day. Claimant could use both upper extremities for simple grasping, reaching, pushing and pulling and fine manipulating. He had some depression and bi-polar disorder. (pp. 25-36)

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. 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: bi-polar 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 in the record indicating claimant suffers severe mental limitations. There is no mental residual functional capacity assessment in the record. 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 a gain 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, drug, 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 his substance abuse is material to his alleged impairment and alleged disability.

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 acting in compliance with department policy when it denied claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of light or sedentary work even with his impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.

Landis

/s/

Y. Lain

Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: July 28, 2010

Date Mailed: July 29, 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/alc

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