

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 200913761

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

July 09, 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 July 9, 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)?

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 29, 2008, claimant filed an application for Medical Assistance, and Retroactive Medical Assistance benefits alleging disability. Claimant filed a second application on February 20, 2008. The applications are herein consolidated with claimant's permission.
- (2) On May 6, 2008, the Medical Review Team denied claimant's application stating that claimant's impairment's do not meet duration.
- (3) On May 8, 2008, the department caseworker sent claimant notice that his application was denied.
- (4) On May 28, 2008, claimant filed a request for a hearing to contest the department's negative action.

- (5) On May 5, 2009, the State Hearing Review Team requested additional medical information stating that it had insufficient evidence.
- (6) The hearing was held on July 9, 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 August 3, 2010.
- (8) On August 9, 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) and unskilled work per 20 CFR 416.968(a) pursuant to Medical Vocational Rule 203.14 and commented that this may be consistent with past relevant work. However, there is no detailed description of past relevant work to determine this. In lieu of denying benefits as capable of performing past relevant work in denial to other work based on a Vocational Rule will be used.
- (9) On the date of hearing claimant is a 49-year-old man whose birth date is [REDACTED]. Claimant is 6'2" tall and weighed pounds. Claimant is a high school graduate. Claimant could not read and write well and not do basic math well because he had slow learning and Adult Deficit Hyperactive Disorder and was in special education in school.
- (10) Claimant last worked 2007 in a factory. Claimant has also worked in a car dealership as a parts driver and detailer, as a manager, he has also worked as a janitor and doing machine work.
- (11) Claimant alleges as disabling impairments: bi-polar disorder, diabetes mellitus, back pain and heart disease.

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

In addition, claimant does receive unemployment compensation benefits. In order to receive unemployment compensation benefits under the federal regulations, a person must be monetarily eligible. They must be totally or partially unemployed. They must have an approvable job separation. Also, they must meet certain legal requirements which include being physically and mentally able to work, being available for and seeking work, and filing a weekly claim for benefits on a timely basis. The Administrative Law Judge finds that claimant has not established that he has a severe impairment or combination of impairments which have lasted or will last the durational requirement of 12 months or more or have kept her from working for a period of 12 months or more. Claimant did last work July 2007. Claimant was receiving at the time of the hearing in the amount of \$ [REDACTED] bi-weekly.

The objective medical evidence on the record indicates that a July 12, 2009 psychological evaluation indicates that claimant was diagnosed with depressive disorder with psychotic features, post-traumatic stress disorder moderate, ruled out bipolar disorder and poly-substance abuse by history to alcohol, marijuana, and cocaine. Claimant was oriented except for the date. He did not know who the current president

was although he thought it was a black man. He indicated that he has never really had any interest in politics. The claimant was able to count backwards from 90-87 with the exception of one error when he jumped from 90 to 80 and then to 89. He was unable to compute reverse serial seven's. His first response was 95. He was able to recall 2 of 3 objects after a period of 3 minutes. He placed himself at a level 9 on a 10 point scale of depression, 10 being the highest. He stated he felt suicidal a few days ago. He stated he couldn't figure out a way to do it in this life without pain. He stated that he sometimes sees himself being killed. He stated that when he overdosed on speed balls a few years ago along with alcohol, he was trying to end his life. He stated that he also cut his wrists several times, the last time being about a year ago. At this point, there was noted a number of scars on both forearms. Claimant stated that he was fed up and he didn't have what he needed. The only time in his recent years that he felt homicidal was when he saw some other guy talking to his girlfriend. Claimant admitted that he was paranoid and stated that there were many days when he often does not leave the house for a fear that something would happen. He also admitted to experiencing auditory and visual hallucinations. He stated that they have occurred most of his life. The claimant stated that he experiences nightmares in which death is happening to him or others and a lot of the nightmares are about events that he experience back home.

His writing achievement test indicated that he is functioning at the 4th grade reading level, with word recognition and the 33.7 grade placement level with regard to spelling. Mental residual functional capacity assessment indicates that claimant has difficulty with authority figures, some memory problems, as well as the ability to concentrate. Additionally his right arm appears to prevent him from performing repetitive tasks. Back surgery has also allegedly caused some restrictions. His GAF was 42.

A mental residual functional capacity assessment in the record indicates that claimant was moderately limited in the ability to remember locations and work like procedures and understand and remember detailed instructions, as well as carry out detailed instruction and maintain attention and concentration for extended periods of time, as well as to ask simple questions or to request assistance and adhere to basic standards of neatness and cleanliness and respond appropriately to changes in the work setting and set realistic goals to make plans of others. He was allegedly markedly limited in the areas of working without being distracted by other, completing a normal work day and work week without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods, the ability to interact appropriately with the general public, the ability to accept instructions and respond appropriately to criticism from supervisors, the ability to get along with co-workers or peers without distracting them or exhibiting behavioral extremes, and the ability to travel in unfamiliar places and use public transportation.

A medical physical examination dated June 7, 2008, indicates that claimant's blood pressure on his right arm was 140/110 and on the left arm 130/104. Pulse was 84 and regular, respiration 16, weight 200 pounds, maximum weight 260 pounds. Height 73 1/2" with no shoes. The claimant was cooperative throughout the exam. His hearing appeared normal and speech is clear. The claimant exhibits a normal gait and does not

require an assistive device for ambulation. There are no lesions on the skin appreciated nor is there cyanosis or clubbing. Evaluation of the back does reveal well healed lower thoracic and lumbar midline scars. There is also well healed scars over the anterior shoulder as well as ulnar aspect for the right elbow. Eyes: visual acuity in the right eye is 20/70 and left eye is 20/50. The claimant does not wear glasses. The sclerae are not icteric nor are there any conjunctivae pallor. Pupils are equal and reactive to light in accommodation. The fundus appears normal. Supple with no thyroid masses or goiter. No bruits are appreciated over the carotid arteries. There is no lymphadenopathy (p. 144).

The chest AP diameter is grossly normal. Lungs are clear to auscultation without any adventitious sounds. The heart was normal S1-S2 are heard. No murmurs or gallops are appreciated. The heart does not appear to be enlarged clinically. The PMI is not displaced. The abdomen was flat and non-tender without distention. There are no masses felt, nor is there enlargement of the spleen or liver. There are no obvious bony deformities. Peripheral pulses are easily palpated and symmetrical. There is no edema. There is no evidence of varicose veins. There is no tenderness, erythema or effusion of any joint. The claimant had no difficulty maneuvering on and off the examination table. He was noted to have some pain with squatting. Straight leg raise is negative bilaterally. There is no palpable paravertebral muscle spasm. The hands exhibit full grip strength and full fist formation bilaterally. Range of motion testing was reduced in the dorso lumbar spine flexion but normal in all other areas. The neurological area: motor function remains intact. Reflexes are present and symmetrical. No disorientation is noted. The claimant had intact sensation throughout but was noted to have decreased sensation to pin prick in the bilateral feet extending up to the mid shin bilaterally. The conclusion was poorly controlled diabetes, hypertension, and reported heart disease, and musculoskeletal back and right upper extremity pain (pp. 145-146).

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, suicidal ideology, post traumatic stress disorder, memory problems, as well as paranoia.

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 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. Under the Medical-Vocational guidelines, a younger individual (age 49), with a high school education and an unskilled work history who is limited to light work is not considered disabled.

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 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 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

2009-13761/LYL

Date Signed: August 20, 2010

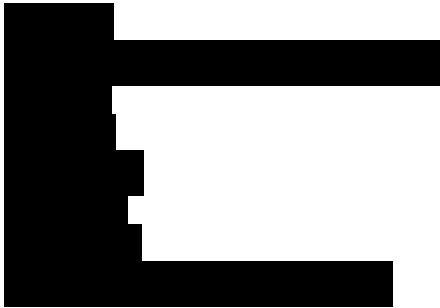
Date Mailed: August 23, 2010

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

cc:

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