

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: 2009-20702

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

July 9, 2009

Eaton 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 July 9, 2009. Claimant originally asked for an in-person hearing. This Administrative Law Judge drove to a different location by mistake and claimant was willing to hold the hearing over the telephone. 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)?

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 10, 2008, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits to June 2008, alleging disability.

(2) On December 9, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On December 11, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On March 12, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On May 11, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The claimant has a history of substance abuse with current alcohol dependence. There is evidence of neuropathy in the lower extremities but he was able to walk without assistance. The remainder of his physical and mental exam was unremarkable. Public Law 104-121 is cited due to the materiality of drug and alcohol abuse. The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of simple, unskilled, medium work. In lieu of detailed work history, the claimant will be returned to other work. Therefore, based on the claimant's vocational profile of a younger individual, 16 years of education and a history of unskilled work, MA-P is denied using Vocational Rule 203.28 as a guide. Retroactive MA-P was considered in this case and is also denied.

(6) Claimant is a 49-year-old man whose birth date is [REDACTED] Claimant is 5'11" tall and weighs 152 pounds. Claimant has an associates degree and is able to read and write and has basic math skills.

(7) Claimant last worked in 2007 landscaping and mowing. Claimant has also worked construction.

(8) Claimant alleges as disabling impairments: hypertension, asthma, high cholesterol and shortness of breath as well as a lower back injury and pain, arthritis and neuropathy in his feet. Claimant also alleges depression.

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 is not disqualified from receiving disability at Step 1.

The psychological evaluation dated [REDACTED], shows the claimant had an extremely strong odor of alcohol at the time of the evaluation. He also had a history of marijuana and cocaine abuse but denied current use of those (pg 6). There was no evidence of that disorder. He did not exhibit evidence of hallucinations, delusions or obsessions (pg 7). His diagnoses included alcohol dependence, chronic and severe, and major depressive disorder, recurrent (pg 8).

A physical examination date of [REDACTED], showed the claimant ambulated on his own with an antalgic gait. The claimant was 5'10" tall and 132 pounds. Blood pressure was 110/82. Sensory examination showed decreased vibratory sensation in a stocking glove distribution in the right lower extremity to the knee and in the left lower extremity to the ankle. The remainder of the examination is unremarkable (pg 12 and 13). A [REDACTED], hospital summary indicates that claimant's blood pressure was 122/67, heart rate was 76 and respirations 18. BLOX was 99% on room air, and his temperature was 97.9 degrees. In the cardiovascular area his first and second heart sounds are normal and no accompaniments. Abdomen was soft and non-tender and there was no organomegaly. His cranial nerves II through XII could not be accurately evaluated because of the claimant's intoxication. Claimant's CT of his head was negative for any acute bleed or fracture. CT of the neck was negative for any acute fracture and positive for degenerative changes. The chest x-ray reveals old granulomatous disease, no acute infiltrates. X-ray of the lumbar spine revealed no acute fracture, positive degenerative changes. X-ray of the pelvis revealed no acute fracture, positive postoperative changes (pg 28).

An [REDACTED] examination done [REDACTED], indicates that claimant was well-developed, well-nourished, white male in no acute distress. He ambulated on his own with an antalgic gait. He was 5'10" and his weight was 132 pounds. Blood pressure was 110/82. Pulse was 116 and regular. Respiratory rate was 18. HEENT normocephalic. Pupils were equal, round and reactive to light and accommodation. Extraocular muscles were intact. Sclerae were clear. Conjunctivae pink. Fundi was within normal limits. Tympanic membranes were clear bilaterally. Nasal mucosa was pink without polyps. Pharynx was moist without erythema or exudates. His neck was supple with free range of motion. No thyromegaly, lymphadenopathy or JVD is noted. Carotid upstrokes are good without bruits. Lungs were clear to auscultation. There was normal

resonance to percussion. Cardiovascular at regular rate and rhythm without murmurs. Normal S1 and S2. No S3 or S4. No rubs or thrills were appreciated. Back: there was no spinal or CVA tenderness. Range of motion is within normal limits. There is no straight leg raise noted on either side. There are good bowel sounds in all four quadrants. No masses or bruits are appreciated in the abdomen. No organomegaly was noted. Extremities: claimant has had no clubbing, cyanosis, or edema noted. There were good peripheral pulses palpated distally. There was no tenderness or inflammation in any of the joints noted. There is good range of motion in all joints noted as well. The claimant was alert and oriented to time, person and place. Cranial nerves 2-12 are grossly intact. Motor examination showed normal power and tone throughout. Sensory exam showed decreased vibratory sensation in a stocking glove distribution in the right lower extremity to the knee and in the left lower extremity to the ankle. Deep tendon reflexes are 2+ and equal bilaterally. Cerebellar function is intact. Gait is antalgic. Claimant was assessed with bilateral neuropathy and the doctor stated that it is thought to be either to alcohol use which he continues now or possibly some chemicals he used in his landscaping business. He had a fairly significant evidence of neuropathy in the lower extremities. He had back pain but had no significant testing. His range of motion was within normal limits. There was no evidence of radiculopathy on examination (pg 12 and 13).

At Step 2, the 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/psychiatric 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 is no

medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, the DHS-49 has restricted claimant from tasks associated with occupational functioning based upon the claimant's reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that claimant has met the evidentiary burden of proof can be made. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

There is no evidence in the record indicating claimant suffers mental limitations resulting from his reportedly depressed state. There is no mental functional capacity assessment in the record. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. Claimant was oriented to time, person and place during the hearing and was able to answer all the questions at the hearing. If claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of claimant's condition would 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 past relevant work. Claimant's past relevant work was as a landscaper and doing odd jobs. Claimant testified that he does currently support himself by doing odd jobs. Claimant does do some mowing with an outdoor riding mower. There is no medical evidence upon which this Administrative Law Judge can base a finding that claimant is unable to perform work which he has engaged in the past. Thus, if claimant had already been denied at Step 2, he would be denied again at Step 4.

Claimant testified on the record that he does have 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 a cognitive dysfunction that is so severe it would prevent claimant from working at any job. In addition, based upon claimant's report, it was documented that he had abused alcohol as well as alcohol withdrawal would have contributed to his physical and mental problems.

Claimants 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, the Administrative Law Judge finds the objective medical evidence on the record has not established 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 information 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.

This Administrative Law Judge finds that even if claimant were to be considered disabled, his substance abuse is material to the determination of disability. Therefore, this Administrative Law Judge finds that claimant does not meet the statutory disability definition under the authority DAA legislation because claimant's substance abuse is material to his alleged impairments and alleged disability.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance and retroactive Medical Assistance benefits. The claimant should be able to perform a wide range of light or sedentary work even with his impairments. The department has established 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: August 17, 2009

Date Mailed: August 17, 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.

LYL/db

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