

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: 2009-4106  
Issue No: 2009  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
January 8, 2009  
Shiawassee 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 January 8, 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 23, 2008, claimant filed an application for Medical Assistance and retroactive Medical Assistance to March 2008 alleging disability.

(2) On July 24, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On July 28, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On October 23, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On November 18, 2008, the State Hearing Review Team denied claimant's application and requested additional medical information.

(6) Additional medical information was submitted and sent to the State Hearing Review Team on February 26, 2009.

(7) On March 17, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of light work per 20 CFR 416.967(b), unskilled work per 20 CFR 416.968(a) pursuant to Medical-Vocational Rule 202.13.

(8) Additional medical information was sent to the State Hearing Review Team on April 9, 2009.

(9) On April 15, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of light work per 20 CFR 416.967(b) and unskilled work per 20 CFR 416.968(a) pursuant to Medical-Vocational Rule 202.13 and stated that drug and alcohol abuse is material per 20 CFR 416.935 and commented that the claimant has a long history of alcohol abuse. In January 2007 the MRT approved benefits as meeting Listing 5.05. The claimant's total bilirubin in [REDACTED] and [REDACTED] was 2.5. In February 2008 the MRT denied benefits due to medical

improvement. His bilirubin had improved to 1.6 in [REDACTED]. This is a new application for benefits which was taken in June 2008 with retro to March 2008. The claimant's total bilirubin during his hospitalization in [REDACTED] was 1.7. The medical information in the file suggests that the claimant continues to drink alcohol and his ongoing problems are cirrhosis of the liver due to his alcoholism. In [REDACTED] the claimant had minimal ascites present and liver enlargement. In [REDACTED] he was noted to have degenerative changes in the lumbar spine with generalized bulging at L4-L5 and L5-S1. An exam in [REDACTED] (A2) and on [REDACTED] [REDACTED] (C22) showed no abdominal tenderness or organomegaly or ascites. In [REDACTED] 2008 he reported that he stopped drinking heavily one month prior to the exam (A1). On [REDACTED] [REDACTED] the claimant reported that he has slowed down his drinking (D23). He had very minimal ascites and liver enlargement noted on that exam (D24). The claimant's liver disease would be expected to improve even more if he stopped all alcohol. However, his condition does not currently meet or equal any listing found for liver disease, spine disorders or hypertension.

(10) Claimant is a 51-year-old man whose birth date is [REDACTED]. Claimant is 5' 10" tall and weighed 200 pounds on the date of hearing. Claimant had recently gained 20 pounds. Claimant attended the 11<sup>th</sup> grade and does have a GED. Claimant is able to read and write and does have basic math skills.

(11) Claimant last worked five years ago in a junkyard. Claimant also drove a truck, worked in a plastics factory and built refrigerators for [REDACTED] for 10 years.

(12) Claimant alleges as disabling impairments: cirrhosis, hypertension, coronary artery disease, esophageal varices, lower back pain, foot numbness, and sharp pain in the right leg. Claimant did not allege any mental impairment.

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

At Step 2, the objective medical evidence on the record indicates that claimant's total bilirubin during his hospitalization in [REDACTED] was 1.7. The medical information in the file suggests that the claimant continues to drink alcohol and has ongoing problems with cirrhosis of the liver due to his alcoholism. In [REDACTED] the claimant had minimal ascites present and liver enlargement. In [REDACTED], he was noted to have degenerative changes in the lumbar spine with generalized bulging at L4-L5 and L5-S1. On exam in [REDACTED] and on [REDACTED] [REDACTED] (C22) showed no abdominal tenderness or organomegaly or ascites. In [REDACTED] claimant reported that he stopped drinking heavily one month prior to the exam (A1). On [REDACTED], the claimant reported that he had slowed down his drinking (D23). He had very minimal ascites and liver enlargement noted on the exam (D14).

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

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. A DHS-49 in the file done [REDACTED] indicates that claimant was normal in all examination areas except he had some general fatigue and he had stiff joints and some back pain. He was 5' 10" tall and weighed 173 pounds. His blood pressure was 120/80. He was right hand dominant and he had a visual acuity of 20/20 in both eyes. Claimant's condition was stable and he could stand or walk at least two hours in an eight hour day. Claimant could occasionally pick up 50 pounds or more and frequently pick up 10 pounds. Claimant did not need assistive devices for ambulation and he was able to use both of his upper extremities for simple grasping, reaching, pushing/pulling and fine manipulating and he could operate foot and leg controls with both feet and legs. Claimant had no mental limitations. 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 on his report 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 testified on the record that he does not have any mental impairment. 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 past relevant work.

Claimant's past relevant work was medium or light. There is no evidence in the record that claimant has any severe physical or mental limitations which would prevent him from performing jobs which he has already done in the past. 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 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 at least 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 testified on the record that he does cook everyday and cooks in the microwave and that he grocery shops one time per month and that he gets a ride and he rides in the electric cart. Claimant testified that he does dust, sweep, make the bed and do laundry and he feeds his dog and his hobby is reading. Claimant testified he can walk a half a block, stand for a half an hour and sit for an hour at a time. Claimant testified that he is able to shower and dress himself, tie his shoes and touch his toes and that the heaviest weight he can carry is 20 pounds and on a repetitive basis he can carry a gallon of milk. Claimant is right

handed and he testified that his hands and arms are fine and that he does have some right leg pain. Claimant testified that his level of pain on a scale from 1 to 10 without medication is a 9 and with medication is a 5. Claimant testified that he does smoke under a pack of cigarettes per day and his doctor has told him to quit but he is not in a smoking cessation program. Claimant testified that he does drink two beers a week and his doctor has told him to stop.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial gainful activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

Claimant is not in compliance with his treatment program.

Claimant testified that in a typical day he gets up and eats and takes his medication and then he takes care of the dishes and watches television for eight hours and reads a book for three hours. Claimant testified that he needs his teeth pulled before he has back surgery because his teeth are broken off and rotten.

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.

In this case, the law indicates that individuals are not eligible and/or not disabled where drug addiction or alcoholism is a contributing factor material to the determination of disability. This Administrative Law Judge finds that even if claimant were to be considered disabled under Steps 1 through 5, he would not be disabled based upon the fact that he is not in compliance with his treatment program and that he does continue to drink despite the fact that his doctor has told him to quit. 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.

Claimant testified on the record that he does not have any mental disorders.

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 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. In addition, based upon claimant's reports, it is documented that he had heavy use of alcohol as well as alcohol withdrawal which would contribute to his physical and any alleged mental problems.

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 at least light or sedentary work even with his impairments.

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. Claimant is not in compliance with his treatment program. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.

/s/  
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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.

LYL/vmc

cc:

