

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: 2010-20999

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 6, 2010

Ingham 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 April 6, 2010. Claimant failed to appear. 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 October 16, 2009, claimant filed an application for Medical Assistance and retro Medical Assistance benefits for the months of July, August and September 2009.

(2) On November 4, 2009, the Medical Review Team denied claimant's application stating that claimant's impairments lacked duration.

(3) On November 17, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On February 12, 2010, claimant filed a request for a hearing to contest the department's negative action.

(5) On March 3, 2010, 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 416.968(b), unskilled work per 20 CFR 416.968(a) pursuant to Medical Vocational Rule 202.10.

(6) The hearing was held on April 6, 2010. At the hearing, claimant's representative waived the time periods and requested to submit additional medical information.

(7) Additional medical information was submitted and sent to the State Hearing Review Team on April 7, 2010.

(8) On April 16, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the Office of Administrative Hearings returned this case with new evidence. The new evidence documents a short in-patient stay in the hospital related to deep venous thrombus and pulmonary embolus. The state was secondary to subtherapeutic Coumadin and level. The patient was discharged in stable condition. The claimant's impairments do not meet/equal the intent or severity of a Social Security Listing. The medical evidence of record indicates that claimant retains the capacity to perform a wide range of light exertional work. Therefore, based on the claimant's vocational profile of 50 years old, a less than high school education and a history of heavy-skilled employment, Medicaid P is denied

using Vocational Rule 202.11 as a guide. Retroactive Medicaid P was considered in this case and was also denied. State Disability Assistance was not applied for by the claimant. Listings 1.02, 1.03, 1.04 and 4.12 in considering this determination.

(9) Claimant is a 50-year-old man whose birth date is [REDACTED] Claimant is 5'9" tall and weighs [REDACTED] pounds.

(10) Claimant alleges as disabling impairments: arthritis, back pain, and deep venous thrombus.

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, this Administrative Law Judge does not have any evidence that claimant is engaged in substantial gainful activity. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that in October 26, 2009 Medical Examination Report indicates that claimant is 5'9" and weighs 191 pounds. His blood pressure was 91/60. He is age 50; his sex is male. His left and right visual were 20/25. He ambulated with no assistive device. He was well-groomed, cooperative without exercises. His head was normocephalic from his eyes had conjugates; perilla; disc sharp; feels intact to confrontation

testing. In the ears, hears conversational speech; tympanic membranes intact. The neck had no masses, no adenopathy or enlarged thyroid; no bruits or carotid arteries; no JBD. The chest was clear to auscultation; A-P diameter WML. Heart S1 S2 with no murmur or S3 or S4. In the abdomen there were no masses or organomegaly; no pain to percussion; no bowel sounds; no bruits. In the extremities there were no cyanosis of limb, as selego and no joint erythema or edema; radial and pedal pulses intact; no signs of cellulitis on the right distal leg; mild tortous varicosities on the left leg; left calf is 36 cm while the right calf is 35 cm in circumference; nodules at the dipip joints of the fingers; fifth fingers show angular rotation to old fractures; pain at the S1 regions with palpation; in a sitting posture he lifted a ten-pound dumbbells over his head with each hand. The neuromuscular cranial nerves 2 to 12 were intact. Motor skills had no atrophy, manual muscle testing was normal; no muscle spasm, Jamar 40 bilaterally, right handed. In the sensory had intact touch, vibration and position sense. The straight leg negative bilaterally and in a seated position. Cerebellar tone normal; rapid alternating movement intact; no tremor or ataxia; fine and gross motor coordination intact for ADLs and independent ambulating. Deep tendon reflexes equal but brisk with no signs of clonus. Range of motion normal to all areas; he was able to forward flex more than 90 degress and caused pain in the LS region. Gait was equal swing and stance so that claimant could climb steps, heel and toe walk and full squat without assistance. The conclusion was lower back pain consistent with SI dysfunction rather than radiculopathy. Mild edema of the left leg posed DVT edema and is a recovering alcoholic and he could do orthopedic movements on DDS form 41. He was more comfortable sitting and lifting than standing and getting up from the floor. (Page A1, A2, and A3.) A mental status examination performed on page 59 of the medical reports indicates that patient's affect was restricted. Move was mild to moderately dysphoric as well as mildly anxious. Patient was alert

and oriented x3. His speech was clear and coherent. Thoughts evidenced no suicidal ideation whatsoever at the time with patient [REDACTED] impulsive attempt. He stated that he does not recall stating that he would attempt suicide again if released and probably said something I didn't mean when I had too much vodka. He denies homicidal ideation. No psychotic features were evident or reported. Attention and concentration evidence mild distractible ability. Short-term memory says he was able to recall two or three objects after two minutes. Insight is fair. Judgment is such that he minimizes the attempt but he will follow-up with his primary care physician, [REDACTED] for treatment of back pain and says he will decrease alcohol abuse and consider attending AA. The drug screen was negative for all screen drugs. The impression was adjustment disorder, mood disorder, alcohol abuse with intermittent bingeing, status post overdose and a Global Assessment of Function (GAF) approximately 52. (Page 59 and 60 medical reports.) A Medical Examination Report of July 9, 2009 indicates that claimant had a left lower extremity, deep venous thrombosis. No clinical evidence of pulmonary embolism. Extensive coordination over 60 minutes formed by primary care physician. Claimant had history of alcohol abuse (Page 11). In January 7, 2010, in the discharge summary indicates that claimant came into the emergency room with a complaint of left lower extremity pain that had started on January 6, 2010 that progressively worsened. Claimant had a history of left lower extremity DVT. Upon his admission, his INI was 1.03. He was seen by [REDACTED] who will not see him any further. The discharge diagnosis was DVT and pulmonary embolism. He was discharged in stable condition on January 14, 2010. (Pages B1 through B6.) The clinical impression is that claimant is stable.

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 [REDACTED] 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.

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 a 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 again 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 her 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), 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.

(DA&A Paragraph) Claimant's testimony and the information indicate that claimant has a history of *(**tobacco, drug, 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.

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

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.

/s/

Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 30, 2010

Date Mailed: June 30, 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/tg

cc:

