

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: 2010-24579

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 14, 2010

St. Clair County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on April 14, 2010. Claimant personally appeared and testified.

ISSUE

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

FINDINGS OF FACT

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

(1) On January 22, 2010, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On January 29, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical Vocational Rule 202.20.

(3) On February 4, 2010, the department caseworker sent claimant notice that his application was denied.

(4) On February 19, 2010, claimant filed a request for a hearing to contest the department's negative action.

(5) On March 16, 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 416.967(b), unskilled work per 20 CFR 416.968(a) pursuant to Medical Vocational Rule 202.20.

(6) The hearing was held on April 14, 2010. 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 April 14, 2010.

(8) On April 15, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The evidence supports that the claimant would retain the ability to perform light exertional and simple and repetitive tasks. The only area of note in recent treatment is that the claimant was not feeling well and walked to the hospital during winter and ended up with an exacerbation of previously-diagnosed COPD. The claimant is noted to have an overall stable physical condition. The claimant is noted for continued polysubstance abuse, which in part contributes to mental impairment. In addition, the claimant does not have any relevant work history. 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 light exertional work or a simple and repetitive nature. Therefore, based on the claimant's vocational profile of 45 years old, a high school equivalent education and a history of no gainful employment, MA-P is denied using

Vocational Rule 202.20 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above-stated level for 90 days.

Listings 1.02, 1.03, 1.04, 3.02, 4.02, 4.04, 5.01, 12.02, 12.04, 12.08, 12.09, and 13.13 were considered in this determination.

(9) Claimant is a 45-year-old man whose birth date is [REDACTED] Claimant is 5' 10" tall and weighs 265 pounds. Claimant attended the 7th grade and does have a GED. Claimant is able to read and write and does have basic math skills.

(10) Claimant is currently employed part-time in a car lot where he hangs out and washes car 2 to 3 hours per day, and earns about \$ [REDACTED] per day. Claimant was in prison from [REDACTED] and he cooked and worked in food services. Claimant also worked as a mechanic for 10 years and in food service for 10 to 15 years.

(11) Claimant alleges as disabling impairments: a 2006 motor vehicle accident while in prison, where he received injuries. Claimant alleges that he has degenerative disc disease, heart problems, brain damage, carpal tunnel syndrome, congestive heart failure, Chronic Obstructive Pulmonary Disease (COPD), bleeding ulcers, hypertension, tumor on his pituitary gland, post-traumatic stress disorder, and a post-concussion syndrome.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms)... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).

4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant is not engaged in substantial gainful activity but does work at a car lot washing cars 2 to 3 hours per day. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant is alleging disability secondary to degenerative disc disease and brain injury. Further investigation reveals the following: hypertension with hypertensive cardiovascular disease with left ventricular diastolic heart failure, chronic tobacco use/dependence, Chronic Obstructive Pulmonary Disease (COPD), peptic ulcer disease, pituitary adenoma and history of a closed head injury. There was also a psychiatric evaluation performed in April 2009 with a diagnosis of: cocaine and alcohol dependence, depressive disorder and rule out post-traumatic stress disorder. The claimant states that he used substances for pain relief. Psychiatric effects: primarily associated with substance abuse; the claimant is noted to be able to handle a wide range of simple daily tasks without difficulty. The claimant has no past relevant work. The claimant is noted for multiple physical issues. The claimant was treated for what was thought to possibly be a lower gastrointestinal bleed during the first part of December 2009, and left the hospital against medical advice. The claimant was later an inpatient December 2009 for acute COPD exacerbation from walking to the hospital. The claimant was noted for attempting to implicate the hospital for monetary gain. The claimant had a stress test in January 2010, which came back within normal limits,

otherwise only showing evidence of previous infarct. (State Hearing Review Team Decision, April 13, 2010)

A hospital admission, dated December 17, 2009, indicates that claimant's EKG showed normal sinus rhythm. The impression was that he had bronchitis from acute exacerbation. Chest x-ray showed limited infiltrates in the left base. He had hypertension, chronic smoking, chronic alcoholism and substance abuse with cocaine and a history of peptic ulcer disease and degenerative disc disease. His temperature was 98.1, pulse was 86, respiration was 20, saturating 95% on room air; with blood pressure 95/59. His general appearance was calm and comfortable. His HEENT was negative. Lungs had expiratory wheezes bilaterally. Heart sounds with regular rate and rhythm and normal S1 and S2. His abdomen was soft and non-tender. In his extremities: he had no edema, cyanosis or clubbing. (Pages A1, A2)

A hospital admission of December 8, 2009, indicates the patient left against medical advice on December 9, 2009. The 45-year-old male patient with extensive medical condition, admitted secondary to an acute lower gastrointestinal bleed. The patient was evaluated by gastroenterology, however, the patient did not wish to pursue any further medical care. Hence, the patient left against medical advice. A discharge was not contemplated on this patient. The patient left against medical advice. (Page A3)

A psychological report, dated April 24, 2009, indicates that claimant was pleasant, cooperative and fairly attentive. He described his current mood as confused because he was fighting the urge to use again and because he was in severe pain. His head was throbbing and it had gotten worse in the last 3 hours. He appeared to be at least mildly depressed and his affect was mobile. Motor activities were within normal limits. Contact with reality was fair. Self-esteem appeared intact. Claimant stated that he didn't know the date, but then stated April 2009, and that it's the 24th. He stated his date of birth as [REDACTED] and his full name. He was oriented to

time, person and place during the meeting. Claimant remembered 4 numbers forward and 3 numbers backward, and 3 minutes later. When asked to remember 3 words, he stated that he hates that. "This is another thing that f--- my head up and depresses me." When asked who the president was, he said "the history maker, Obama, and before him Clinton, and before him Carter." He stated that the governor was another woman, assuming Jennifer Granholm. He named famous people as Mary Monroe, Arnold Swartznegar, and John Wayne. He named four large cities as Detroit and New York, Houston, and San Diego. He completed serial 7's as 93, 86, 79, 72, 65, 58, 51, 44, 37, 30, 23, 16, 9, and 2. He spelled house, "h-o-u-s-e" and he spelled it backwards, "e-s-u-o-h." When asked what – all that glitters is not gold, means, he stated that "all that seems good may not be good". That – every cloud has a silver lining, was "I don't know. I've heard it. Every cloud has a silver lining." In similarities and differences: he was asked how a chicken and a duck were alike and he stated "they were birds." When asked how they were different, he said, "One has a bigger bill or beak. I don't know. Oh, and a chicken lays eggs." When asked how a cat and a lion are alike, he said "they are in the same family." When asked how they are different, he said, "One will kill you." In summary, the claimant acknowledged a history of cocaine and alcohol use and difficulty coping with chronic pain. Clinically, he presented with mildly depressed mood and his affect was mobile. Claimant's emotional distress appears largely related to the challenges of coping with chronic pain and sobriety issues. Sufficient history and symptom information was gathered to substantiate a diagnosis of cocaine dependence, alcohol dependence and depressive disorder NOS. His GAF was 60. (Pages B1-B7)

This Administrative Law Judge did read all 400 plus pages of medical reports in making this determination.

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; 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: depression, post-traumatic stress disorder, post-concussion syndrome (confusion).

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 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 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), 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 tobacco and drug 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 her substance abuse is material to her alleged impairment and alleged disability.

It should be noted that claimant continues to smoke despite the fact that her doctor has told her to quit. Claimant is not in compliance with her treatment program.

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).

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that claimant was not eligible to receive Medical Assistance and/or State Disability Assistance.

DECISION AND ORDER

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

Accordingly, the department's decision is AFFIRMED.

/s/

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

Date Signed: June 28, 2010

Date Mailed: June 29, 2010

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

LYL/cv

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