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: 2010-25198
Issue No: 2009; 4031
Case No: [redacted]
Load No:
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 personally appeared and testified. Claimant was represented at the hearing [redacted]

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 September 22, 2009, claimant filed an application for Medical Assistance, State Disability Assistance and retroactive Medical Assistance benefits for the months of June, July and August, 2009.

(2) On November 18, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On December 9, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On March 5, 2010, claimant filed a request for a hearing to contest the department's negative action.

(5) On March 18, 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(c) pursuant to Medical Vocational Rule 202.20.

(6) The hearing was held on April 6, 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 18, 2010.

(8) On April 20, 2010, the State Hearing Review Team again denied claimant's application stating that claimant's impairments lacked duration per 20 CFR 416.909.

(9) Claimant is a 51-year-old man whose birth date is [redacted] Claimant is 6' tall and weighs 175 pounds. Claimant recently lost 20 pounds. Claimant attended the 9th grade, but does not have a GED. Claimant was in Special Education when he was in school. Claimant is able to read and write and stated that he struggles with basic math and that he can't count money.

(10) Claimant last worked in a detailing shop about 10 years ago, from the 1980's. Claimant went to [redacted] Claimant was receiving SSI from 2005 to 2008. He was in [redacted] and he was receiving SSI from 2000 to 2003.

(11) Claimant alleges as disabling impairments: asthma, missing lung, drug problems, spleen removal, pancreas operation, diabetes mellitus Type I, Chronic Obstructive Pulmonary Disease (COPD), shortness of breath and pancreatitis.

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 and has not worked since the 1980's or 1990's. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant was hospitalized February 6, 2010 through February 9, 2010 and was diagnosed with Chronic Obstructive Pulmonary Disease exacerbation, community-acquired pneumonia, insulin-dependent diabetes, chronic pancreatitis, elevated troponin, and cocaine and tobacco abuse. He reported he was admitted because he had a 3-day history of increasing abdominal pain from his baseline abdominal pain in addition to progressive shortness of breath. He presents to ER and initially

was given a breathing treatment and sent home, but came back because of shortness of breath. He had been released from jail about a week prior to admission. Upon admission, vital signs were: heart rate 110, blood pressure 159/75, viox was 99% on 4L, respirations were 22. The patient did appear to be dyspneic. Physical exam was significant for inspiratory and expiratory wheeze with a fair amount of air exchange. He was tachycardic. Abdomen was mildly distended and he was tender to palpation in the epigastric area. Also to note, claimant did have a history of pancreatic tail removal, splenectomy and a right pneumonectomy. CT of the abdomen upon admission revealed chronic pancreatic and no acute changes. He was placed on the COPD pathway. The patient did leave the medical floor to go outside against medical advice. To note, the nursing staff did have concerns that the patient seemed to be acting high and there was some worry that he may have smoked something other than tobacco when he left the floor, although this could not be confirmed. Urine drug screen was positive for [redacted] cocaine and opiates. The hospital had been giving the claimant opiates for pain control when he was in the hospital. His breathing improved over the course of his stay. He remained on 2L mostly for comfort, although his oxygen saturations were in the high 90's to 100%. On the day of discharge, the patient was overheard having a full conversation and did not have any notable shortness of breath or dyspnea. Oxygen saturations were 98% on room air and ambulating viox was 97%. The patient remained afebrile and had been tolerating a regular diet without any nausea or vomiting. A repeat chest x-ray on February 8, 2010 showed no significant change and no acute process. (New Information, page 15)

On [redacted] claimant was hospitalized for chronic pancreatitis and chronic stomach pain. He was diagnosed with having an episode of acute pancreatitis without enzyme elevation. He was managed conservatively. (Claimant Exhibit A, pp. 1-3)

A Medical Examination Report, dated February 23, 2010, indicates that claimant was normal in all areas of examination except he had COPD and shortness of breath, and he had chronic pancreatitis and chronic abdominal pain. He was 70" tall and weighed 168 pounds. His blood pressure was 140/84. (Page 8)

A Medical Examination Report, dated August 3, 2009, indicates that claimant admitted that he had two beers on the Friday before he entered the hospital and he had two shots of cocaine. He came to the ER with abdominal pain and shortness of breath. He had relief of shortness of breath after Albuterol nebulizations in the ER. He did not have any diarrhea or constipation and no discoloration of his stools or blood in stools. He denied any fever or chills. His vital signs on presentation were temperature afebrile, blood pressure 156/82, pulse oximetry 99% of room air, heart rate 93, and a respiratory rate of 20. On examination of the abdomen, inspection was positive for a midline scar. Bowel sounds were positive in all four quadrants. Palpation of the abdomen was soft without any rigidity and guarding was present. Tenderness in the periumbilical and right hypochondriac areas. (Pages 17-18)

A physical examination report from [redacted] dated October 15, 2009, indicates that the claimant was sitting comfortably in a chair with his legs crossed and in no obvious distress. He was able to rise from the chair to perform activities requested of him. Affect and dress were appropriate. He was well groomed and provided a good effort, which was consistent. The patient was cooperative in answering questions and following commands. The patient's immediate, recent and remote memory appeared intact with normal concentration. The patient's insight and judgment appeared appropriate. Blood pressure in the left arm was 150/80, pulse was 88, respiratory rates equals 20, weight was 181 pounds, height was 71" without shoes, BMI was 25.2. The skin had numerous well-healed scars noted. Eyes and ears: The visual acuity in the right eye equaled 20/15 and in the left eye equaled 20/15 with corrective lenses. The

patient could hear conversational speech without limitation or aids. In the chest: breath sounds were clear to auscultation and symmetrical. There was no accessory muscle use. He demonstrated a wet cough. Chest circumference with full inspiration was 38". Chest circumference with full expiration was 36.5". Heart: there was regular rate and rhythm without apparent enlargement. There was a normal S1 and S2. In the abdomen, there was no apparent organomegaly or masses. In the vascular: no clubbing, cyanosis, or edema was detected. There were no stasis dermatitis changes noted in the lower extremities, which were without hair. In the musculoskeletal area: the patient was left-handed. There was no evidence of joint laxity, crepitus or effusion. Full fist with full grip bilaterally was present with excellent pinch or grasp. Dexterity appeared unimpaired. The patient was able to tie his shoelace and button clothing and pick up a dime. The patient had no difficulty getting on and off the examination table, no difficulty heel and toe walking, and no difficulty squatting and arising, no difficulty balancing, no difficulty hopping, and no difficulty with a tandem walk. In the neurological area: cranial nerves II-XII appeared grossly intact. Motor strength and tone appeared normal. A tingling sensation to light touch was noted on the toes of the right foot. Romberg testing was negative. The patient walked with a normal gait without the use of an assistive device. Position sense of both great toes was intact. Claimant had a lot of cough and had less coughing after use of medication. His pulmonary functioning testing suggested a positive response to bronchodilator administration. This long-time smoker may have an element of Chronic Obstructive Pulmonary Disease present. Complete smoking cessation is strongly supported. (Pages 6-8)

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 does not allege any mental impairments.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers severe mental limitations. 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 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, drug and alcohol abuse. Applicable hearing is the Drug Abuse and Alcohol (DA&A) Legislation, Public Law 104-121, Section 105(b)(1), 110 STAT. 853, 42 USC 423(d)(2)(C), 1382(c)(a)(3)(J) Supplement Five 1999. The law indicates that individuals are not eligible and/or are not disabled where drug addiction or alcoholism is a contributing factor material to the determination of disability. After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that claimant does not meet the statutory disability definition under the authority of the DA&A Legislation because 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

cc: [redacted]