

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 201035255

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

July 13, 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 July 13, 2010. 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 January 5, 2010, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits for the months of December, November, and October 2009 alleging disability.
- (2) On April 12, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work.
- (3) On April 22, 2010, the department case worker sent claimant notice that his application was denied.
- (4) On May 4, 2010, claimant filed a request for a hearing to contest the department's negative action.

- (5) On May 25, 2010, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work but is restricted in working around excessive fumes, heat or dust and can perform medium work per 20 CFR 416.967(c), unskilled work per 20 CFR 416.968(a) pursuant to Medical Vocational Rule 203.28.
- (6) Claimant is a 49-year-old man whose birth date is [REDACTED]. Claimant is 5' 8" tall and weighs 205 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills.
- (7) Claimant last worked in 2003 setting up steel racks. Claimant has also worked as a clerk in a window manufacturing business and manufacturing tombstones.
- (8) Claimant alleges disabling impairments: chronic pulmonary insufficiency, back pain, depression, memory loss, gastroesophageal reflux disease, shortness of breath and asthma, emphysema, herniated disc in his back, bronchitis, allergies to grass, chronic obstructive pulmonary disease, gum abscesses, joint itches, and peripheral artery disease.

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, claimant is not engaged in substantial gainful activity and has not worked since 2003. Claimant is not disqualified from receiving disability at Step 1.

The objective evidence on the record indicates that the Social Security Administration denied claimant's application for SSI benefits on August 28, 2009 stating: we have determined that your condition is not severe enough to keep you from working. We considered the medical and other information, your age, education, training and work experience in determining how your condition affects your ability to work. You said that you were disabled because of COPD, asthma, emphysema, and irregular chest pain. Although you have physical discomfort and may be depressed at times the medical evidence shows that you are still able to move about in a satisfactory manner, understand and communicate with others. We realize your condition prevents you from doing your past jobs. When we apply the Social Security rules to the medical evidence regarding your condition we find you are able to do work that is not complicated, can be learned in a short period of time and does not require heavy lifting or exposure to extreme hot/cold or fumes.

Claimant testified on the record that he lives off of bottles and cans and he lives with his brother who supports him. Claimant testified that he is single with no children and has no income but does receive Food Assistance Program benefits and the Adult Medical Program. Claimant does not have a driver's license because he has two prior DUIs and he usually catches the CATA bus one time per week to go to the doctors and to the library. Claimant testified that he does cook daily and cooks things like pasta, salad, and sandwiches. Claimant does grocery shop 2-3 times per week and he gets a ride or walks to the neighborhood store which is about 6 blocks away. Claimant testified that he sleeps on a blanket on the floor and that he does dishes and laundry and was doing some lawn mowing but he can't do that because of his allergies. Claimant testified that he usually collects coins but they have all been stolen. He watches television 2-3 hours per day and plays video hours 1 ½ hours per day and reads 4 hours per day. Claimant testified that he can stand for 30 minutes at a time, sit for 30 minutes to an hour at a

time and can walk 6 blocks, squat, and can bend at the waist. Claimant's back is painful but his knees are fine. Claimant testified that he can shower and dress himself and he can tie his shoes while sitting and can touch his toes and that he does have a toothache and a backache. Claimant testified that his level of pain on a scale from 1 to 10 without medication is a 4 and with medication it varies. Claimant testified that he is right-handed and his hands and arms are fine and he does have some peripheral artery disease in his legs and feet which causes numbness. Claimant testified that the heaviest weight he can carry is 40 pounds, but repetitively he can only carry 5 pounds. Claimant testified that he does smoke 3 cigarettes per day and his doctor has told him to quit and he is taking Zyban and the nicotine patch. Claimant testified that he does drink a ½ a pint of 80 proof liquor per week and the doctor didn't tell him to quit. Claimant testified that he stopped doing marijuana and cocaine about 2 years before the hearing. Claimant testified that in a typical day he gets up and uses his nebulizer and takes his medications, then he has breakfast and watches television and plays video games, and he has lunch and reads the rest of the day, and then he does the dishes.

A psychological examination dated March 18, 2010 indicates that claimant was oriented to time, place, and person. In memory he could recall 4 digits forward and 4 digits backward. He could recall 3 out of 3 objects after a 3-minute time lapse. He knew his birthday and could correctly name 4 recent past presidents. He exhibited average capabilities for general fund of information. He could correctly name many large cities, many currently famous people, and 3 current events. In calculations he could not complete serial 7's with 3 mistakes. In abstract reasoning claimant exhibited average capabilities for abstract reasoning. He stated that the proverb "the grass is greener on the other side of the fence" met different always looks better to people. He stated that the proverb "don't cry over spilled milk" met if you can't help it don't worry about it. Similarities and differences he indicated that a bush and a tree were alike in that they were both plants. He indicated that they were different in size. In judgment claimant exhibited average capabilities for social judgment and comprehension. He stated that if he found a stamped, addressed envelope in the street he would mail it. He stated that if he was the first person in the theater to discover fire he would hit the alarm. He exhibited average cognitive capabilities. He appeared to have unimpaired capabilities to understand, retain and follow simple instructions and to perform and complete simple tasks. He appears to have moderately impaired capabilities to interact appropriately and effectively with coworkers and supervisors and to adapt to changes in the work setting. It was suspected that his depression and social alienation would result in moderately impaired capacity to do work-related activities. He was diagnosed with major depressive disorder, alcohol dependence, and polysubstance dependence, as well as schizoid personality disorder, and his current GAF was 53 and he was not capable of managing his own funds because it was recommended he receive assistance with the management of his funds until he has been completely drug and alcohol free for one year and his prognosis was poor. (Pgs. 6-7)

A physical examination dated February 19, 2010 indicates that the claimant was a well developed, well nourished, white male in no acute distress. He ambulates on his own without difficulty. His height is 5' 8" and his weight is 196 pounds. His blood pressure

was 120/82. Pulse was 112 and regular. Respiratory rate was 16. HEENT : normocephalic and atraumatic. Pupils were equal, round and reactive to light and accommodation. Extraocular muscles were intact. He did have a slight right isotropia noted. Fundi were not well visualized. Pharynx is moist without erythema or exudate. The neck was supple with free range of motion. No thyromegaly, lymphadenopathy or JVD was noted. Carotid upstrokes are good without bruits. In the cardiovascular area there was regular rate and rhythm without murmurs. Normal S1 and S2. No S3 or S4. No rubs or thrills are appreciated. In the back there was no spinal or CVA tenderness. Range of motion was within normal limits. There was no straight leg raise noted on either side. In the lungs there was a prolonged expiratory phase. He did have faint and expiratory wheezes throughout the lung fields both anteriorly and posteriorly. There was hyper-resonance to percussion. There was no rhonchi or rales noted. The abdomen was soft and non-tender, non-distended, with good bowel sounds in all 4 quadrants. No masses or bruits were appreciated. No organomegaly was noted. In the extremities no cyanosis, clubbing, or edema was noted. There were good peripheral pulses palpated distally. In the musculoskeletal area there was no tenderness or inflammation in any of the joints noted. There was good range of motion in all joints noted as well. In the neurological area, the claimant was alert and oriented to time, person, and place. Cranial nerves II-XII were grossly intact. Motor exam showed normal power and tone throughout. Sensory exam was within normal limits. Deep tendon reflexes were 2+ and equal bilaterally. Cerebellar function was intact. Gait was normal. Pulmonary function testing was done both pre and post bronchodilator. The claimant did give fairly adequate maneuvers. His pre bronchodilator test showed a moderate obstructive deficit after bronchodilator was administered. There was a significant improvement in his FEV₁. (Pgs. 9-10)

A Medical Examination Report dated July 21, 2009 indicates that claimant was normal in most areas of examination and he was 68 ¼" tall and weighed 186.8 pounds and his blood pressure was 125/87 and he was right-hand dominant. He appeared disheveled and unkempt. He had some severe wheezing on inspiration and expiration. He has disconnected thought process and difficulty following directions. The clinical impression was that claimant was deteriorating and that he could occasionally carry less than 10 pounds and that he could stand and walk less than 2 hours in an 8-hour workday but he could sit less than 6 hours in an 8-hour workday. He did not need assistive devices for ambulation and he could use both of his upper extremities for simple grasping, reaching, pushing and pulling, and fine manipulating and operate foot and leg controls with both of his legs and feet. He did have some severe shortness of breath which limited his ability to walk, climb, lift, and push or pull and he had some alcohol dependence which has impaired his memory as well as his ability to follow simple directions and interact socially. (Pgs. 22-23)

This Administrative Law Judge did consider the entire medical packet of approximately 103 pages.

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 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: memory loss, depression, and the ability to follow instructions and short attention span.

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 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.

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 his substance abuse is material to his alleged impairment and alleged disability.

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

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.

