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

IN THE MATTER OF:



Reg. No: 2010-35299
Issue No: 2009; 4031
Case No: Load No: Hearing Date:

Hearing Date: October 14, 2010 Jackson County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

## **HEARING DECISION**

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

## <u>ISSUE</u>

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 May 14, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On May 4, 2010, the Medical Revi ew Team denied claimant's application stating that claimant could perform other work.
- (3) On March 30, 2010, the department ca seworker sent claimant notice that his application was denied.
- (4) On April 12, 2010, c laimant filed a request for a hearing to contest the department's negative action.
- (5) On May 26, 2010, the Stat e Hearing Rev iew Team again denied claimant's application stating that cl aimant is capable of performing work in the form of light work per 20 CFR 416.967(b), unskilled wor k per 20 CFR 416.968(a) pursuant to Medical Vocat ional Rule 202.20. The State

Hearing Review T earn commented that this may be consistent with past relevant work. However, there is no detailed description of past work to determine this. In lieu of denying benefits as capable of performing past work a denial to other work based on a Vocational Rule will be used (p. 117).

- (6) Claimant is a 36-year-old man whose birth date is is 6' tall and weighs 160 pounds. Cla imant has a GED and is currently attending

  Claimant is able to read and write and does have basic math skills.
- (7) Claimant last worked in April 2 009, as a laborer. Cla imant has also worked as a machinist and a masonry laborer and cutting and bending rebar.
- (8) Claimant alleges as di sabling impairments: right f oot pain, a deformity in the right foot as well as a broken rib, plates and screws in the right foot, left knee cap which locks up and left hip pain as well as herniated discs and a CVA which cause temporary blindness as well as depression.

# CONCLUSIONS OF LAW

The State Disability A ssistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Service s (DHS or department) admin isters the SDA program pursuant to MCL 400.10, et seq., and MAC R 400.3151-400.3180. Department polic ies are found in the Bridges Administrative Manual (BAM), the Bridges Elig ibility Manual (BEM) and the Program Reference Manual (PRM).

The Medical Assistance (MA) program is estab lished by Title XIX of the Social Sec urity Act and is implemented by Title 42 of the C ode 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 substant ial 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 deter mine disability. Current work activity, severity of impairments, residual functional capacity, past wor k, 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 experienc e. 20 CFR 416.920(c).

If the impairment or combination of impair ments do not signific antly limit physica I 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 press ure, X-rays);
- (4) Diagnosis (statement of disease or injury based on it's 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 with out 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 a cceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an indiv idual can do des pite 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 decis ion about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other ev idence 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 "doisabled" 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 s everal considerations be analyzed in sequential order. If disability can be ruled out at any step, analys is of the next step is <u>not</u> required. These steps are:

- 1. Does the client perf orm S ubstantial 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 cli ent is ineligible for MA. If yes, the analysis c ontinues to Step 3. 20 CF R 416.920(c).
- 3. Does the impairment appear on a spec ial listing of impairments or are the cli ent's symptoms, signs, and laboratory findings at least eq uivalent in s everity to the set of medical findings specified for the listed impairment? If no, the analys is 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 subs tantial gainful activity and has not worked since 2009. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the reco rd indicates t hat claimant testified subjectively that he lives in a shelter and his family and friends support him. Claimant is divorced with no children under 18 who live him and he has no income. Claimant receives Food Assistance program benefits and the Adult Medical program. Claimant does not have a driv er's lic ense becaus e he had a DUIL in 2001 and 2004, but he usually takes the city bus two times per week to Claimant testified that he does cook 2 ti mes per day and uses the microwave and cooks things like hamburger helper. Claimant testified that he grocery shops one time per month and usually needs help with the heavy stuff. Claimant test ified that he does clean t he bathroom and usually does 2 hour s of chores per week at the shelter and he watche s TV 1 hour per day. Claimant stated that he can stand for 10-15 minutes at time, sit for 35-40 minutes at a time and can walk 2 bl ocks. Claimant stated that he has poor balance and cannot squat, but can bend at the waist. Claimant testified that he is able to shower and dress himself while he is sitting and he cannot tie his shoes standing or touch his toes. Claimant testifi ed that his level of pain of a scale from 1-10 without medication is a 7-8 and with me dication is a 4-5. Claimant stated that he right handed and he has problems with his left side from his CVA. Claimant testified that he can't carry anything and he does smoke a pack of ci garettes per day and his doctor has told him to guit and he is not in a smoking cessation program. Claimant testified that he guit drinking in April 2010 and that he stopped doing heroin and other drugs years ago. Claimant testified that in a typical day he gets up, showers and does to appointments.

A medical examination report in the file from March 30, 2010, indicates that claimant is 72" tall and weighs 152.8 pounds and his blood pressure was 118/82. He was normal in all areas of examination except he had tenderness in epigastric area with palpitation and a right foot/ankle deformity (p. 113).

The clinical impression is that claimant is stable and that he can occasionally carry 20 pounds or less but never carry 25 pounds or mo re. Claimant can stand or walk at least 2 hours in an 8 hour day and c an sit less than 6 hours in an 8 hour work day. Claimant can use his upper extremities for simple gr asping, reaching, pus hing, and pulling and fine manipulating but could not operate f oot and leg controls with eit her foot or leg. Claimant has no mental limitations (p. 112).

An April 19, 2010, letter from a medical doctor indic ates that claimant suffers from a chronic foot pain due to an old closed fracture, his right foot/ankle has deformed due to his fracture. It is recommended that he see an orthopedic doct or for management of this. He is unable to lift greater than 25 pounds, no walking or standing for more than 2 hours in an 8 hour work day and no operating foot and leg controls (p. 111).

A second medical examination r eport dated May 21, 2009, indic ated that claimant was 72" tall and weighed 154 pounds and his blood pressure was 144/89. He was normal in all areas of examination ex cept for right foot latera. I deformity and some spinal tenderness. The clinical impression is that claimant was stable and at that time he could occasionally lift less than 10 pounds but never lift 10 pounds or more and he could stand or walk at least 2 hours in an 8 hour work day and sit about 6 hours in an 8 hour work day. He did not require assistive devices for ambulation and he was able to use his upper extremities for simple gras ping, reaching, and fine manipulating but not pushing and pulling and he could use his left foot for oper ating foot and leg controls. Claimant had no mental limitations (pp. 101-103).

This Administrative Law Judge did consider all of the medical reports contained in the file pages 1-117.

At Step 2, claimant has the burden of pr oof of establishing that she 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 clinic al findings that suppor t the reports of symptoms and limitations made by t he claimant. There are no labor atory 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 (sympt oms) 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 claim and has a severely restrictive physical impairment.

Claimant alleges the following disabling mental impairments: depression.

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/ps ychiatric e vidence in the record indicating claimant s uffers severe mental limitations . There is no ment al residual functional capacity assessment in the record. There is in sufficient 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 or iented 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 evidentiar y record is insufficient to find that claimant suffers a severely restrictive mental impair ment. 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 hi s ability to perform his past relevant work. There is no evidence upon which this Admin istrative 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 a gain 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 capac ity is what an individual can do desp ite 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 class ify 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 lik e 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 wor k 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 categor y 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 objecti ve 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 ha s 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 mont hs. 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/ps ychiatric evidence contained in 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 plac e during the hearing. Claimant's c omplaints of pain, while pr ofound and credible, are out medical evidence contained in the file as it relates to of proportion to the objective claimant's ability to perform work. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establis h that claimant has no residual functional capacity. Clai mant is dis qualified 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 36), with a high school education and an unskilled work history who is limited to light work is not considered disabled pursuant to Medical Vocational Rule 202.20.

The Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (D AA) is material to a person's disability and when benefits will or will not be a pproved. The regulations require the disability analysis be completed prior to a determination of whet her a person's drug and alc ohol use is material. It is only when a per son 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 st ep to determine the materiality of DAA to a person's disability.

When the record contains ev idence of DAA, a determination must be made whether or not the per son 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. Ap plicable hearing is the Dr ug Abus e and Alc ohol (DA&A) Legislation, Public Law 104-121, Sect ion 105(b)(1), 110 STAT. 853, 42 USC 423(d)(2)(C), 1382(c)(a)(3)(J) Supplement Five 1999. The law indicates that indiv iduals 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 ev idence on the whole record, this Administrative Law Judg e finds that claimant does not meet the statutory disability definition under the authority of the DA&A Legis lation because his subs tance 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's Program Elig ibility Manual contains the following policy statements and instructions for casework ers regarding the State Disability Assistance program: to receive State Disability Assist ance, a person must be disabled, caring for a disable diperson 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 Stat e 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 conclusion sof 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.

Landis

Y. Lain

Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: November 18, 2010

Date Mailed: November 19, 2010

**NOTICE**: Administrative Hearings may or der 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 Hear ings 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 ti mely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

### LYL/alc

