

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: 2010-35816

Issue No: 2009; 4031

[REDACTED]

ADMINISTRATIVE LAW JUDGE: Suzanne L. Morris for Ivona Rairigh

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 June 29, 2010 by Administrative Law Judge [REDACTED], who has since left employment with the State Office of Administrative Hearings and Rules. This hearing was completed by Administrative Law Judge [REDACTED] after reviewing the record. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P), retro MA 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 June 15, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On March 5, 2010, the Medical Review Team denied claimant's application stating that claimant was capable of past relevant work, pursuant to 20 CFR 416.920(E).
- (3) On March 11, 2010, the department caseworker sent claimant notice that his application was denied.

- (4) On May 13, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (5) On June 1, 2010, the State Hearing Review Team again denied claimant's application stating that there was insufficient evidence and requesting the department to obtain a psychiatric evaluation.
- (6) A telephone hearing was held on June 29, 2010. The record was left open to allow the submission of the psychiatric evaluation, as agreed to by claimant.
- (7) The psychiatric evaluation was submitted and sent to the State Hearing Review Team on December 20, 2010.
- (8) On January 13, 2011, the State Hearing Review Team again denied claimant's application citing materiality of drug and alcohol abuse, the claimant's impairments do not meet/equal the intent or severity of a Social Security Listing and the claimant retained the capacity to perform simple, unskilled work, pursuant to Vocational Rule 204.00 (H).
- (9) Claimant is a 41-year-old man whose birth date is [REDACTED]. Claimant is 5'7" tall and weighs 170 pounds. Claimant completed the 10th grade in school, but later obtained his GED. Claimant reports that he can read and write and do basic math, but not very well.
- (10) Claimant reports that he last worked in 2006 cutting grass. He claims experience in cleaning, cooking, and roofing.
- (11) Claimant alleges as disabling impairments: bipolar disease; polysubstance abuse; hypertension; abdominal pain; high blood pressure; a clotted artery in his right leg; diverticulitis, problems with his thyroid and diabetes.
- (12) Claimant resides with his grandmother and mother. He does not cook, clean or grocery shop, as his mother performs these duties. Claimant reports that his only duty around the house is cutting grass. Claimant reports that he is unable to participate in therapy because he has no transportation and is unable to take his prescribed medications due to lack of money. He has no driver's license due to a third DUI conviction. Claimant reports that he quit using drugs and drinking alcohol when he went to prison in 2007.
- (13) Claimant reports that he is independent in most activities of daily living. He reports on a typical day that he sits most of the day on the porch or in the house. Claimant reports that he can only walk about 50 yards, and usually needs the assistance of a cane.

- (14) A May 15, 2009 evaluation conducted in the prison by a physician found the claimant to have good grooming and good eye contact; normal speech and kinetics; full affect; coherent and goal-directed; denied persecutions and audio-visual hallucinations, with a grossly intact sensorium. The claimant's Zoloft prescription was discontinued, his Desyrel was increased, and his Synthroid and Klonopin were continued. (Department Exhibit A, page 47)
- (15) On August 27, 2009, the claimant was admitted to [REDACTED] [REDACTED] presenting with abdominal pain. An examination found the claimant to be within normal limits on most examination areas, except for the nausea and abdominal pain, and he was positive for weakness in his lower extremities. Examination found slightly decreased tone in his lower extremities—4/5 both the lower extremities bilaterally. Strength in his upper extremities was normal—5/5 bilaterally. His sensation was normal—5/5 to light touch and pain in upper extremities and lower extremities bilaterally. The claimant tested positive for marijuana and benzodiazepines. The claimant was diagnosed with diverticulitis, hyponatremia, leukocytosis, possible Pyelonephritis, hypertension (controlled), hypothyroidism, bipolar disorder, anxiety, polysubstance abuse and a history of right leg claudication. (Department Exhibit A, pages 4 – 13)
- (16) On June 24, 2010, a psychological [REDACTED] was conducted, as ordered by the Administrative Law Judge. Hygiene and grooming were adequate. Gross motor functioning was impaired and client walked with a cane. Claimant was perceptually oriented and presented his ideas in a logical and coherent manner. Demonstrated affect was agitated with extreme underlying anger and frustration. Claimant was generally cooperative though easily frustrated and unmotivated on the sensorium and mental capacity portion of the evaluation. Claimant reported that he had lost about 65 pounds in the past year, had stopped taking his medications due to financial issues, had suicidal thoughts and had last used street drugs in the previous week. The psychologist diagnosed the claimant with bipolar disorder with assaultive potential, a history of chronic alcoholism and drug dependency, a history of blood clots, high cholesterol, thyroid problems, probable heart problems and high blood pressure.

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).

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).

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

In general, claimant has the responsibility to prove that he/she is disabled. Claimant's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only claimant's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the claimant has impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

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 2006. Claimant is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence on the record indicates that the claimant has been diagnosed/treated in the past for bipolar disorder, diverticulitis, hypertension, high blood pressure, hypothyroidism and a history of right leg claudication. The claimant has been a polysubstance abuser. While the claimant testified that he last used drugs and alcohol in 2007, before he went to prison, his medical records show that he has continued with drug use. The claimant tested positive for marijuana and benzodiazepines on August 27, 2009, when he was admitted to McLaren Regional Medical Center. The claimant also reported that he had last used street drugs the week prior to his June 24, 2010 independent medical evaluation.

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. In order to be considered disabled for purposes of MA, a person must have a severe impairment. 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual's physical or mental ability to perform basic work activities.

While the claimant has a history of hypertension, high blood pressure, right leg claudication and diverticulitis, these conditions, alone or in combination with each other, have not resulted in a significant limitation to the claimant's basic work activities. The claimant indicates that he sometimes needs to use a cane due to the right leg claudication. However, there is no clinical or laboratory diagnostic techniques to show the diagnosis of right leg claudication, severity of this condition or its impact on the claimant's basic work activities. The claimant was hospitalized and treated for an instance of diverticulitis in August, 2009. However, there are no records to show the claimant has been hospitalized or treated for this condition since that time.

The law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant's symptoms can be managed to the point where substantial gainful activity can be achieved, a finding of not disabled must be rendered.

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 that was completed on July 29, 2009. However, this form and the Psychiatric/Psychological Examination Report (DHS-49D) were not completed or co-signed by an acceptable licensed medical professional (i.e. psychiatrist or psychologist), but was completed by an individual who is a case manager with a Bachelor's Degree in social work. (See 20 CFR 404.1513). Thus, these reports can be given very little weight or credibility in evaluating the claimant's case. The June 24, 2010 independent psychological evaluation found the claimant's hygiene and grooming were adequate. Claimant was perceptually oriented and presented his ideas in a logical and coherent manner. Demonstrated affect was agitated with extreme underlying anger and frustration. Claimant was generally cooperative though easily frustrated and unmotivated on the sensorium and mental capacity portion of the evaluation. Thus, there is insufficient evidence contained in the file of 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.

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. The claimant has a work history of cutting grass, cleaning, cooking, and roofing. The claimant testified in the hearing that he mows the lawn for his mother. Thus, he is capable of performing activities such as those he previously performed. 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 have residual functional capacity to perform any job in the national economy.

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).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

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 heavy, medium, light or sedentary tasks if demanded of him. Claimant's activities of daily living do not appear to be very limited. 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 do not preclude heavy, medium, light or sedentary work.

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 heavy, medium, light or sedentary work even with his impairments. Under the Medical-Vocational guidelines, a younger individual (age 41), with a high school education or the equivalent (GED) and an unskilled work history who is capable of heavy work is not considered disabled pursuant to Vocational Rule 204.00.

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 law 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 polysubstance abuse is material to his alleged impairment and alleged disability.

The department's Bridges 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/ _____
Suzanne L. Morris
Administrative Law Judge
On behalf of Ivona Rairigh
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 3/17/11

Date Mailed: 3/17/11

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.

[REDACTED]