

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: 201037857

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, 2009. 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)?

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 19, 2010, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.
- (2) On March 3, 2010, the Medical Review Team denied claimant's application stating that claimant's impairments lacked duration.
- (3) On March 4, 2010, the department case worker sent claimant notice that his application was denied.
- (4) On June 3, 2010, claimant filed a request for a hearing to contest the department's negative action.

- (5) On June 17, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The evidence supports that there are no severe physical conditions. It is reasonable that the claimant would be limited to performing simple and repetitive tasks. While the claimant has had at least a high school equivalent education, he has not earned gainful employment in the past fifteen years. The medical evidence of record does not document a physical impairment(s) that significantly limits the claimant's ability to perform basic work activities. The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of simple and repetitive work. Therefore, based on the claimant's vocational profile of 49 years old, at least a high school equivalent education, and a history of no gainful employment, MA-P is denied using Vocational Rule 204.00 as guide. Retroactive MA-P was considered in this case and is also denied. SDA was not applied for by the claimant. Listings 1.02, 1.03, 1.04, 3.10, 5.01, 12.04, 12.06, 12.08, and 12.09 were considered in this determination.
- (6) The hearing was held on July 13, 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 July 14, 2010.
- (8) On July 20, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The claimant has chronic neck and back pain with no limitation of motion and no significant neurological abnormalities noted on examination in April 2010. The claimant reports problems with daytime sleepiness despite the CPAP. He was to have some additional testing to evaluate this. It is noted that the claimant has ongoing marijuana dependence and has a history of substance abuse. It is likely that this could contribute to his sleepiness. His diagnosis included marijuana dependence, chronic, possibly in remission; cocaine dependence in remission; alcohol dependence in remission; and avoidant personality disorder with under-socialized features. The psychologist indicated that he did not see evidence of a thought disorder and there was no evidence of hallucinations, delusions, or obsessions. The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of simple, unskilled work avoiding unprotected heights and dangerous moving machinery. The claimant reported no relevant work history. Therefore, based on the claimant's vocational profile of closely approaching advanced age at almost 50, high school equivalent education, and no relevant work history reported, MA-P is denied using

Vocational Rule 203.28 as guide. Retroactive MA-P was considered in this case and is also denied.

- (9) Claimant is a 49-year-old man whose birth date is [REDACTED]. Claimant is 5' 11" tall and weighs 184 pounds. Claimant has a GED. Claimant is able to read and write and does have basic math skills.
- (10) Claimant alleges as disabling impairments: gastritis, sleep apnea, narcolepsy, anxiety, stress, back pain, and cellulitis.

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 2004. Before that time claimant worked as a carpenter and laborer until he was shot in [REDACTED]. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant testified that he lives with his wife and children and his son and sister get Social Security and that's what they live off of. Claimant has no children under 18 and does not receive any income of his own. Claimant receives Food Assistance Program benefits and the Adult Medical Program. The claimant does have a driver's license and he does drive 2-3 times per week and the farthest he drives is around Lansing. Claimant testified that he does not cook or do any grocery shopping because his wife does it. Claimant testified that he sweeps in the home and that he reads as a hobby. Claimant testified that he can stand for 15 minutes at a time, sit for 30-40 minutes at a time, and he can walk 2-3 blocks and has to rest 20-30 minutes afterward. Claimant testified he doesn't take any medication and that he is not able to squat but he can bend at the waist, shower and dress himself, tie his shoes, and touch his toes. Claimant testified that he can carry 50 pounds but repetitively he can carry 10-15 pounds. Claimant testified that his level of pain on a scale from 1 to 10 without medication is a 10 and that the medications do help sometimes but he didn't give a number. Claimant testified that he quit smoking marijuana 5-6 months ago and that he sleeps a lot and just gets up some days and can't really keep awake. Claimant also testified during the hearing that he can't get his Vicodin.

In April 2010 the claimant was 78" tall and weighed 192 pounds. He reported compliance with his CPAP and suboptimal response. The claimant has subjective hypersomnolence that is not very convincing to the sleep doctor or physician's assistant. However, the claimant's primary care physician did believe he had significant hypersomnolence. The claimant was to be scheduled for a multiple sleep latency test.

An April 6, 2010 Medical Examination Report indicates that claimant was normal in areas of examination. The claimant was 5'10" and weighed 182 pounds. His blood pressure was 98/62. The clinical impression was that he was improving. (Pgs. A1-A2)

This Administrative Law Judge did consider all evidence contained in the file. A May 18, 2010 psychological evaluation indicates that claimant was oriented to time, place, and person. He could recall 6 digits forward and 6 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 2 current events. He completed serial 7's with no mistakes. He exhibited average capability for abstract reasoning. He stated that the proverb, "the grass is greener on the other side of the fence" met life will look better if you pursue your dreams. He stated that the proverb "don't cry over spilled milk" met don't carry everything on your shoulders. The claimant indicated that a bush and a tree were alike in that they were both wood. He indicated they were different in size. He 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 if he were the first person in a theater to discover a fire he would warn other people. He was diagnosed with marijuana dependence, cocaine dependence in remission, alcohol dependence in remission, avoidant personality disorder and his current GAF was 53. It was recommended that he receive assistance in management of his funds until he has been completely drug and alcohol free for one full year. His prognosis was guarded. (Pgs. 35-36)

A physical examination conducted April 22, 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 was 5' 9 1/2". His weight was 191 pounds. Blood pressure was 120/78. Pulse was 64 and regular. Respiratory rate was 16. HE ENT: normocephalic and atraumatic. Pupils were equal, round, and reactive to light and accommodation. Extraocular muscles were intact. Sclerae were clear. Conjunctivae were pink. Fundi were within normal limits. Tympanic membranes were clear bilaterally. Nasal mucosa is pink without polyps. 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. Lungs were clear to auscultation. There was normal resonance to percussion. The cardiovascular was regular rate and rhythm without murmurs. Normal S1 and S2. No S3 or S4. No rubs or thrills were 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. The abdomen was soft, 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 there was no cyanosis, clubbing, or edema noted. There were good peripheral pulses palpated distally. In the musculoskeletal area the claimant did have a pes planus deformity in the right foot. There was no significant swelling or tenderness to palpation. Range of motion in the ankle was normal. There was no other evidence of inflammation or tenderness in the other joints. Neurological, 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. (Pgs. 30-31)

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: depression and a dysfunctional family.

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.

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.

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.

Landis

/s/

Y. Lain

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

Date Signed: August 20, 2010

Date Mailed: August 23, 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/vc

cc:

