

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: 2010-39094
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 14, 2010
Saginaw 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, a telephone hearing was held on, 2010. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and State Disability Assistance (SDA)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) On January 8, 2010, claimant filed an application for Medical Assistance, State Disability and retroactive Medical Assistance benefits alleging disability.
- (2) On May 5, 2010, the Medical Review Team denied claimant's application stating that claimant's impairments are non-exertional pursuant to Medical Vocational Rule 204.00.
- (3) On May 12, 2010, the department caseworker sent claimant notice that his application was denied.
- (4) On May 21, 2010, claimant filed a request for a hearing to contest the department's negative action.

- (5) On June 21, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: A Social Security Administration Administrative Law Judge Decision ordered a finding of the claimant retaining the ability to perform medium exertional tasks of a simple and repetitive nature. The evidence in the file supports these findings. 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 medium exertional work of a simple and repetitive nature. Therefore, based on the claimant's vocational profile of 25 years old, a less than high school education and a history of no gainful employment, MA-P is denied using Vocational Rule 203.25 as a guide. Retroactive MA-P was considered in this case and is also denied. State Disability is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above-stated level for 90 days. Listings 1.02, 1.03, 3.03, 12.02, 12.04 and 12.05 were considered in this determination.
- (6) Claimant is a 25-year-old man whose birth date is [REDACTED]. Claimant is 6' 4" tall and weighs 230 pounds. Claimant attended the 8th grade and has no GED and was in Special Education for learning disability. Claimant is able to read and write and can add, subtract and multiply, and count money.
- (7) Claimant last worked in 2010 for one week as a janitor, and he also worked in a carwash when he was 18 years old, for two months.
- (8) Claimant alleges as disabling impairments: depression, Attention Deficit Hyperactivity Disorder, explosive disorder, asthma with chronic bronchitis, post-surgery knee injury, learning disability, and anxiety and comprehension problems.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in

the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the

ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant is not engaged in substantial gainful activity and has not worked since 2010. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant testified on the record that he is single and lives in an apartment, and [REDACTED] pays his rent. Claimant has no children under 18 and does not have any income, and receives Food Assistance Program benefits. Claimant does not have a driver's license and he does take his bicycle and rides every day for a few miles. Claimant does cook every day. He cooks things like tacos, hamburger and chicken. Claimant grocery shops and needs help with budgeting. Claimant cleans his home by cleaning the bathroom, living room, kitchen, bedroom, mopping, sweeping and doing laundry. Claimant's hobbies are basketball and football, watching and playing both games. Claimant is able to stand for a few hours, sit for 5 hours, and walk for 1 ½ miles. Claimant testified that he cannot squat because his knees hurt, but he is able to bend at the waist and his back is fine. Claimant testified that he can shower and dress himself, tie his shoes and touch his toes. His level of pain on a scale of 1 to 10 without medication is an 8, and

with medication is an 8. Claimant testified that he is left-handed and there is nothing wrong with his hands and arms, and that the heaviest weight he can carry is 75 to 100 pounds. The heaviest weight he can carry repetitively is a laundry basket full of clothes. Claimant testified that he smokes ½ a pack of cigarettes per day, and that his doctor has told him to quit and he is not in a smoking cessation program. Claimant testified that he stopped drinking 7 months ago and he no longer smokes marijuana. Claimant testified that in a typical day he makes dinner, sits in his apartment, and goes to bed.

This Administrative Law Judge notes that she is bound by the Social Security Administration's determination that claimant is not disabled.

A Medical Examination Report, dated May 25, 2009, indicates that claimant was awake and alert and sitting on a gurney. His skin was pink, warm and dry. His head had no tenderness, abrasions or bruises of the scalp, no lacerations, no ????. His eyes had no raccoon eyes, no swelling of the eyelids, no subconjunctival bleeds. The ears had no blood behind the TMJs, no fluid drainage. The nose had no fluid drainage and no tenderness. The mouth had no gross acute tooth fractures, no TMJ or jaw tenderness, and no blood in the oropharynx. The neck had no swelling, no gross tenderness over the bony prominent of the c-spine, trachea midline. The lungs were clear to auscultation with no chest wall deformity, no subcutaneous, no emphysema or crepitus with equal breath sounds, and no flail chest. Heart had regular rate and rhythm (page 48). A soft tissue radiograph of the neck showed no abnormalities. The patient could swallow normally. He continued to speak in a normal voice. He was given Motrin and discharged home. His diagnosis was no salt, and a mild contusion (page 49).

A psychiatric report, dated August 11, 2008, indicates that claimant was assessed with Axis I of substance induced mood disorder, single episode; ADHD; alcohol abuse, cannabis abuse (page 103).

On February 19, 2010, claimant had a current GAF of 50.

A psychiatric evaluation, conducted on February 19, 2010, contained in the file indicates that claimant appeared to be of his stated age. He is tall and thin built. His hygiene and grooming are good. He ambulated independently with normal gait. His psychomotor movements are adequate. He avoids eye contact. His speech is coherent and relevant. His mood is depressed. His affect is constricted. Thought processes are slow. He is not delusional. He denies suicidal or homicidal thoughts and plans at this time. He is oriented to time, place, person and situation. Memory: He was able to repeat names of 3 unrelated objects immediately, but able to recall only 1 out of 3 after 5 minutes. His past memory, when asked the names of the past 5 presidents of the USA, he said that the current president is Barack Obama, and before him were Mr. Bush, Mr. Clinton, Mr. Senior Bush, and Ronald Reagan. When asked the names of 5 major cities in the USA, he said that they are Memphis, Cincinnati, Orlando, Atlanta, and New York. His concentration is poor. He was not able to do serial 7s correctly. His responses to subtracting 7s from 100 were 93, 86, 78, 62 and 55. When asked to spell the word "world" backward and forward, he spelled, d-l-r-o-w. He has borderline intellectual

function and he has difficulty in concentration. He says he cannot concentrate when he reads a book. He cannot concentrate on what the books are saying. His insight is adequate. His judgment is adequate. He denies suicidal or homicidal thoughts and plans at this time. His impulse control is adequate at this. His Axis V GAF was 50 and he was diagnosed with depressive disorder, learning disorder and ADHD (page 58).

Claimant received an x-ray of the chest on January 12, 2010. The findings indicated no acute cardiopulmonary process. The mediastinum and cardiac silhouette were within normal limits. The lungs were clear without evidence of consolidation, pleural effusion, or vascular congestion. Minimal linear opacity within the right mid lung laterally likely represents mild atelectasis (page 54).

A Medical Examination Report, dated January 12, 2010, indicates that claimant was a well-developed, well-nourished male who was awake and alert. His blood pressure was 148/71. His pulse was 110, respiratory rate 18, temperature 97.5, and pulse oximetry is 96%. In the chest, he has some slight expiratory wheezing noted bilaterally with no retractions. Sinus tachycardia is noted. There was no anterior chest discomfort. HEENT: oral cavity, nasal cavity and ears are negative. Abdomen is negative. Skin has no rash. Extremities: no localized pain, swelling or erythema. The impression was an acute asthma attack. It indicates that claimant does continue to smoke (page 52).

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 herself 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, Attention Deficit Hyperactivity Disorder, intermittent explosive disorder, and anxiety.

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 her. Claimant's activities of daily living do not appear to be very limited and he should be able to perform light or sedentary work even with his impairments. Claimant has failed to provide the necessary objective medical evidence to establish that he has a severe impairment or combination of impairments which prevent him from performing any level of work for a period of 12 months. The claimant's testimony as to his limitations indicates that he should be able to perform light or sedentary work.

There is insufficient objective medical/psychiatric evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. Claimant was able to answer all the questions at the hearing and was responsive to the questions. Claimant was oriented to time, person and place during the hearing. Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to claimant's ability to perform work. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity. Claimant is disqualified from receiving disability at Step 5 based upon the fact that he has not established by objective medical evidence that he cannot perform light or sedentary work even with his impairments. Under the Medical-Vocational guidelines, a younger individual (age 25), with a less than high school education and an unskilled work history who is limited to light work is not considered disabled.

The Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) is material to a person's disability and when benefits will or will not be approved. The regulations require the disability analysis be completed prior to a determination of whether a person's drug and alcohol use is material. It is only when a person meets the disability criterion, as set forth in the regulations, that the issue of materiality becomes relevant. In such cases, the regulations require a sixth step to determine the materiality of DAA to a person's disability.

When the record contains evidence of DAA, a determination must be made whether or not the person would continue to be disabled if the individual stopped using drugs or alcohol. The trier of fact must determine what, if any, of the physical or mental

limitations would remain if the person were to stop the use of the drugs or alcohol and whether any of these remaining limitations would be disabling.

Claimant's testimony and the information indicate that claimant has a history of tobacco, drug, and alcohol abuse. Applicable hearing is the Drug Abuse and Alcohol (DA&A) Legislation, Public Law 104-121, Section 105(b)(1), 110 STAT. 853, 42 USC 423(d)(2)(C), 1382(c)(a)(3)(J) Supplement Five 1999. The law indicates that individuals are not eligible and/or are not disabled where drug addiction or alcoholism is a contributing factor material to the determination of disability. After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that claimant does not meet the statutory disability definition under the authority of the DA&A Legislation because 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's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that claimant was not eligible to receive Medical Assistance and/or State Disability Assistance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of light or sedentary work even with his impairments. The department has established its case by a preponderance of the evidence.

