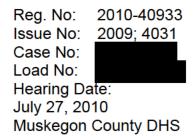
STATE OF MICHIGAN STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES ADMINISTRATIVE HEARINGS FOR THE DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:





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 July 27, 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 22, 2010, claimant filed an application for Medical Assistance, State Disability Assistance benefits alleging disability.
- (2) On March 31, 2010, the Medical Review Team denied claimant's application stating that claimant's impairments are non-exertional.
- (3) On May 6, 2010, the department casewo rker sent claimant notice that her application was denied.
- (4) On June 28, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (5) On July 7, 2010, the State Hearing Review Team again denied claimant's application stating: the claimant was admitted in January 2010, due to hearing voice and depression. She was started on al cohol wit hdrawal

protocol. With treatment her vo ices had been modif ied and she was not suicidal. Her thoughts were congruent, relevant and reality based. Her condition improved with treatment. The claimant's impairment's do not meet/equal the intent or se verity of a Social Securi ty listing. The medical evidence of record indicates t hat the claimant retains the c apacity to perform a wide range of simple unskill ed work. In lieu of detailed work history the claimant will be returned to other work. T herefore, based on the claimant's vocational profile of a younger indi vidual, limited education and a hist ory of unskilled work , MA-P is denied using Vocational Rule 204.00(H) as a guide. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the nature and severity of the claimant's impairment's would not preclude work activity at the above stated level for 90 days.

- (6) Claimant is a 48-year-old woman whose birth date is Claimant is 5'4" tall and weighs 190 pounds. Claimant attended the 10 grade and has no GED. Claimant is able to read and write and does have basic math skills.
- (7) Claimant last worked July 2009 as a janitor cleaning in an insuranc e office. Claimant has also worked as a cook and received SSI from when it was discontinued.
- (8) Claimant alleges as disabling im pairments: schizophrenia, depression, substance abuse, suicidal, and anxie ty. Claimant alleg es no physica I impairments.

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 ar e found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (B EM) 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 T itle 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 disab ility does not exist. Age, education and work ex perience will not be c onsidered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings wh ich demonstrate a medical im pairment.... 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 di sease 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 bas ic 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 wa lking, 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 evidenc e relevant to the claim, including m edical opinions, is rev iewed 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 s ource finding t hat an individual is "d isabled" or "unable to work" does not mean that disability e xists 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 s equential order. If disability can be r uled out at any step, analys is of the next step is <u>not</u> required. These steps are:

1. Does the client perform Substant ial 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).
- Does the impairment appear on a special listing of impairments or are the clie nt's symptoms, signs, and laboratory findings at least equiv alent 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 forme r work that he/she performed within the last 15 years? If yes, t he client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
- 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, A ppendix 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 record i ndicates that claimant testified that she a month in Food Assistance Program benefits and her boyfriend supports receives \$ her. She is single with no children under 18 and does not have any of her own income. She rides her bike daily and usually rides it about a mile or so. Claimant does not have a driver's license and she gets where she want s to go by walking or riding her b ike. Claimant cooks 1 time per day and cooks th ings like chicken and hamburgers and she grocery shops one time per month and she sometimes needs help because doesn't like crowds. Claimant does cl ean her home by washing dishes, running the v acuum and doing laundry. She watches TV 20 hours per day and likes to fish but she doesn't hav e a fishing license. Claimant testified that she has no limits on her ability to stand, sit or walk and that she can squat, bend at the w aist, shower and dress herself, tie her shoes and touch her toes. Her back is fine but her right knee pops out sometimes and she massages it until it goes back into the socket. Claimant testified that her level of pain on a scale from 1-10 wit hout medication is a 10 and wit h medication is a 5. Claimant is right handed and her hands and arms are fine and her legs and feet are fine. Claimant testified that the heaviest weight that she can carry is 10-20 pounds and she does smoke a pack of cigarettes every two weeks and her doctor has told her to guit and she is not in a smoking cessation program. Claimant testified that she usually drinks about a half a pint of liquor per week and her doctor has told her to stop drinking and she used

to take PCP, crack and marijuana but she stopped doing those things about 5 years before the hearing.

The claimant was admitted in J anuary 2010, due to hearing v oices and depression. She was started on alcohol withdrawal prot ocol and started on medication. Diagnos is included s chizoaffective disorder-bi-polar type, poly substance abuse and personality disorder (p. 46). A psychiatric evaluation dated January 2010, s howed the claimant's speech was of normal rate and tone. She st ated her mood was depressed. Her affect was full and spontaneous and m atter of fact. She admits auditory halluc inations but admits to a decreased in in tensity and frequency. There was no evidence of delus ional thinking except for occasional paranoia from time to time. There are no other over t psychosis. Diagnosis included sc hizoaffective disorder-depressed and a history of poly substance dependence (p. 62).

In February 2010, the claimant was seen for follow- up med review. Speech was of normal rate and thought were sequential. She was dressed appropriately for the weather. Her affect was full and she was somewhat spontaneous. Her mood appeared to be a bit anxious but not flat or depre ssed. She denied any significa nt auditor y hallucinations, occasionally voic es return but not on a daily basis. She has been beginning to feel more active. Cognitively she appears to be grossly intact (p. 56). She was to begin therapy and continue medications (p. 55).

In March 2010, her mood was euthymic. She denied any depression although she was a bit anxious. She denied any auditory ha Ilucinations. Voices had been modified by medication and she was not suicidal. T hought were congruent and relevant realit y based and insight was developing (p. records from DH)

At Step 2, claimant has the burden of pr oof of establishing that she has a severe ly 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. in multiple areas of her Claimant has reports of pain body; however, there are no corresponding clinic al findings that suppor t the reports of symptoms and limitations made by the 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 herself from tasks associated with occupational functioning based upon her reports of pain (s ymptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that claimant has met the evidentiary burden of pr oof can be made. This Administrative Law Judge finds that the medical record is insu fficient to establish that claim ant has a severely restrictive physical impairment.

Claimant a lleges the following d isabling m ental impairments: schizophren ia, bi-polar disorder, depression and suicidal.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations ar e assessed using the criteria in paragraph (B) of the listings for mental di sorders (descriptions of restrict ions of activities of daily living, social functioning; c oncentration, persistence, or pace; and ability to tolerat e increased mental demands associated wit h com petitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

There is insufficient objective medical/ps ychiatric evidence 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 w ould prevent claimant from working at any job. Claimant was or iented to time, person and plac e during the hearing. Claimant was able to answer all of the questi ons 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 her burden of proof at Step 2. Claimant must be denied benefits at this step bas ed upon her failure t o 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 sh e 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 her again at Step 4 based u pon her ability to perform her past relevant work. There is no ev idence upon which this Administrative Law Judge c ould base a finding that claimant is unable to perform work in which she has engaged in, in the past. Therefore, if claimant had not already been denied at Step 2, s he would be denied again at Step 4.

The Administrative Law Judge will continue to proceed through the sequentia evaluation process to determine whether or not claimant has the residual functional capacity to perform some other less strenuous tasks than in her 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 t han 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 whic h 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 she lacks the residual functional capacity to perform some other less strenuous tasks than in her prior employment or that she is physically unable to do light or sedentary tasks if demanded of her. Claimant's act ivities of daily liv ing do not appear to be very limit ed and sh e should be able to per form light or sedentary work even with her impairments. Claimant has failed to provide the necessary objective medical evidence to establish that she has a severe impairment or comb ination of impairments which prevent her from performing any level of work for a period of 12 mont hs. The claimant's testimony as to her limitations indicates that she should be able to perform light or sedentary work.

There is insufficient objective medical/ps ychiatric evidence contained in the file of depression or a cognitive dysfunction that is so severe that it w ould prevent claimant from working at any job. Claimant was able to answer all the questions at the hearing and was responsive t o the questions. Claimant was oriented to time, person and plac e during the hearing. Claimant's complaints of pain, while profound and credi ble, are out of proportion to the objective medical evidence c ontained in t he 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 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 she has not established by objective medical evidence that she cannot perform light or sedentary work even with her impairments.

The Federal Regulations at 20 CFR 404.1535 speak to the determination of whethe r 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 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 material ality of DAA to a person's disability. When the record contains ev idence of DAA, a determination m ust 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, alcohol abuse. Applicable hearing is the Drug Abuse 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 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 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 her subs tance abuse is material to her alleged impairment and alleged disability.

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

If an individual fails to follow prescribed tr eatment which would be expect ed to restor e their ability to engage in substantial acti vity without good caus e, 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 s tatements and instructions for casework ers regarding the State Disability Assistance program: to receive State Disability Assist ance, a person must be dis abled, caring for a disable d person or age 65 or older. BEM , Item 261, p. 1. Because the claimant does not meet the definition of disabled u nder the MA-P program and becaus e the evidence of record does not establish that claimant is unable t o work for a period exceeding 90 days, the claimant does not meet the disability cr iteria 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 Medi cal As sistance and/or State Disability Assistance.

DECISION AND ORDER

The Administrative Law Judge, based upon t he above findings of fact and conclusion s of law, decides that the depar tment has appropriately establis hed on the rec ord that it was acting in compliance wit h department policy when it deni ed claimant's application for Medical Assistance, retroactive Medica I Assistance and Stat e Disability Assistance benefits. The claimant should be able to perform a wide range of light or sedentary work even with her 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: July 28, 2010

Date Mailed: July 29, 2010

NOTICE: Administrative Hearings may or der a rehearing or reconsideration on either its own motion or at t he request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hear ings will not orde r a rehearing or reconsideration on the Department's mo tion where the final decis ion cannot be implemented within 90 days of the filing of the original request.

/s/

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/alc

CC:

