

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

IN THE MATTER OF:



Reg. No: 2010-43871
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 1, 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 September 28, 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 April 26, 2010, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On June 16, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work.
- (3) On May 23, 2010, the department caseworker sent claimant notice that his application was denied.
- (4) On July 1, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (5) On July 28, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The evidence strongly suggests that the claimant's credibility is in question. The claimant denies all his history of substance abuse although

acknowledges elsewhere and longitudinal outlets supports. The claimant's presentation a treating physician is less severe than a psychiatric evaluation and even more severe than the physical examination. His treating source, page 23, there is evidence of a disc bulge at S1 only and that a recent electromyogram was within normal limits. The evidence supports that the claimant would reasonably be limited to performing light exertional tasks of a simple and repetitive nature. 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 light and exertional work of a simple and repetitive nature. Therefore, based on the claimant's vocational profile (49 years-old, at least a high school education and used to medium skilled employment) Medicaid-P is denied using Vocation Rule 202.20 as a guide. Retroactive Medicaid-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, 1.04, 11.14, 12.04, 12.06, 12.09 were considered in this determination.

- (6) The hearing was held on September 1, 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 September 1, 2010.
- (8) On September 3, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the additional medical evidence provided to the Office of Administrative Hearings does not significantly impact the previously determinations of the medical review team/state hearing review team. The claimant would reasonable continue to continue to retain the ability to perform light exertional, simple and repetitive tasks. 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 light exertional work of a simple, repetitive work. Therefore, based on the claimant's vocational profile (49 years old, at least a high school education and a history of medium, skilled employment) Medicaid-P is denied using Vocational Rule 202.20 as a guide. Retroactive Medicaid-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, 1.04, 11.14, 12.04, 12.06 and 12.09 were considered in this determination.

- (9) Claimant is a 49-year-old man whose birth date is [REDACTED]. Claimant is 6' tall and weighs 149 pounds. Claimant is a high school graduate and has 3½ years of college, where he studied Business Administration and Accounting.
- (10) Claimant last worked in 2008 prepping heavy equipment. Claimant did not work from 1999 through 2008 because of pain and he has also worked at [REDACTED] as a fleet maintenance and oil change person and sweeping trailers and checking lights and he worked at [REDACTED] in janitorial.
- (11) Claimant alleges as disabling impairments: Degenerative disc disease, arthritis of the knee, depression, neuropathy, numbness in his arm, and pain in the groin area and lower back pain and neck problems, as well as bipolar disorder, and ADD.

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 2008. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that an employment date of August 26, 2010, physical examination claimant was disheveled, non-cooperative with the exam and stated he has to stand or he gets pain. His gait was antalgic, slow paced, gait with poor posture, hip flex contracture apparent. In shoulder there was no atrophy, gross abnormality or irrationality. His range of motion was severely limited because of pain. He gets a little more range of motion passively but again limited by patient's pain. In the hip, there is no atrophy, gross abnormality or rash noted. The range of motion was limited because of pain. Palpation TTP hip and buttocks. All provocative maneuvers elicited pain. In the cervical spine claimant is severely limited because of pain. Palpation TTP diffusely through. Cervical and upper thoracic spine and paraspinals. Pain with any movement or pressure. In the lumbar spine there was no paraspinal muscle atrophy. TTP diffusely through lumbar spine, sacrum, coccyx, and claimant had pain with all movements. In the neurological area, claimant strength was 5/5 with concerted effort in general. Although difficulty was assessed given limits 2/2 pain. Reflexes were 2+ and symmetrical throughout. MRI of the lumbar spine in January 2010 indicated that degenerative disc disease at L5-S1 with disc osteophyte complex as described above appears to be effacing. The descending right S1 and exiting L5. Some of these changes appeared to be exacerbated secondary to facet arthropathy. An EMG done January 2010 on nerve conduction studies were normal. The needle EMG examination of all tested muscles was normal. There was no electrodiagnostic evidence of a left upper or lower extremity radiculopathy or plexopathy. The examination did not show any signs of focal or neurologic deficits. There was no evidence of neurologic impingement/damage on recent imaging or EMG. Patient was consistent with severe and debilitating myofascial/muscle tightness. New information page 2. Claimant was given specific instructions to follow stretches given by physical therapy. He was counseled on using tobacco and advised to remove all tobacco products from his home and to quit smoking. A July 19, 2010 psychiatric/psychological

medical report indicates that claimant came to the evaluation alone and drove himself. He walked very slowly with a significant limp. His clothing was clean and casual. He wore jeans and t shirt. He wore glasses and a cap. His hair was disheveled. He was cooperative and open. He usually squinted his eyes. He seemed to be in pain at all times and got up several times. The claimant's contact with reality was good. His insight was adequate. His self esteem was poor. His motor activity was normal. His motivation was fair. He was able to function independently but he depends on others for shelter at times. He does not appear to exaggerate or minimize his symptoms. The claimant's thoughts were spontaneous, logical and organized. No evidence of hallucinations, delusions, persecutions, or other unusual thought content was noted during the interview. The claimant endorsed severe somatic complaints, sleep disturbance and some suicidal ideation. His speech was normal. The claimant stated he felt depressed. His affect was appropriate. The claimant was oriented to time, person and place. Claimant could remember, in his immediate memory, 5 numbers forward and 4 backward and in recent memory could recall 2 out of 3 objects. The past few presidents went through Obama, Bush, Cheney, Clinton, Bush, Sr. and Reagan and he said that his birth date was [REDACTED]. Claimant named 5 large cities as Newark, Chicago, Detroit, LA and Frankfurt and famous people were Lindsey Lohan, Sarah Palin. Current events: the oil thing in Louisiana, that racial garbage with the Black Panthers. Calculations were $5+5 \times 5 = 25$; $7 \times 8 = 56$; $12-7=5$, $8+9=17$. He could not do series of 3, stating that he would need a piece of paper and a pencil. When asked to interpret the proverb 'the grass is greener' he stated, "I think it's got something to do with things don't always appear what they look, to do what they look like. They may look green on the other side but once you get to the other side it's not as green as you think." When asked about the proverbs spilled milk, "It's got something to do with don't make a mountain out of a mole hill. When asked similarities between a bush and a tree, he stated both were green plants and differences between a bush and a tree are the heights." If he found a stamped, addressed envelope he would put it in the mailbox if he could and if he discovered a fire in a theatre he would report it to the usher or something. He was able to understand, retain and follow a one and two step instructions. He is able to remember simple routine and repetitive tangible tasks. He did not have any intellectual deficits and has the capacity to perform complex or multi-step tasks, make independent work related decisions, and engage in abstract thinking and work that is not routine. However, his symptoms of bipolar as physical problems were severe and will interfere with his ability to perform any job duties simple or complex on a consistent and reliable basis. He reports having difficulty interacting with others. He was diagnosed with bipolar disorder 1, alcohol abuse in full remission, cannabis abuse in full remission and cocaine abuse in full remission. His GAF was 45 (page 117-118). Claimant's prognosis was poor. He would not be able to manage his own benefits (page 119). A medical care plus examination of July 9, 2010 indicates that the physical examination reveals a young Caucasian male who looks much older than his stated age. He seemed to be in a lot of pain and his pain appeared to be genuine. He was alert and oriented x 3. He is obviously very intelligent. He was able to give a good history of his medical problems. His height was 70"; weight was 69 pounds; blood pressure was 58/82, pulse 106 and respirations 22. Amar? testing his grip strength on the right arm was 100 and the left was 10. He did make a genuine effort when I

checked his grip strength manually. He is much weaker in the left arm than in the right. HEENT: Cranial nerves are grossly intact. He had problems with extension of his neck and left lateral rotation. This elicited a lot of pain in the neck. He had a lot of spasm in the neck muscles and the trapezius muscle, particularly on the left side. No bruit in the neck. No thyromogaly and the chest expansion was good but when he attempted to listen to his lungs he started coughing profusely, which then created a lot of pain in his neck and back. The abdomen was difficult to get him onto the examining table to examine his abdomen or to do straight leg raising because he was in such great pain. He held onto the wall when walking. He walked very gingerly. He is not able to do heel and toe testing or walking in tandem. He was very unstable. He was in pain throughout the examination. He walks very crookedly and to one side. He has severe tenderness of the lower back. He has limited use of the left arm; although he was able to elevate it with great difficulty. He had problems with pronation and supination of the left arm. He had problems with dorsal flexion and plantar flexion and plantarflexion of the wrist. He had some swelling of the left knee and some effusion. Some reflexes were brisker on the left compared to the right. Peripheral pulses were good. Sensation was normal. He was assessed with chronic pain secondary to degenerative disc disease in the neck and back, history of bipolar disorder and had osteoarthritis of the left knee (page 122). This Administrative Law Judge considers all 100 and approximately 30 pages of medical information contained in the file.

At Step 2, claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. There is insufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant has reports of pain in multiple areas of his body; however, there are no corresponding 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: Bipolar disorder, depression 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 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.

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.

Accordingly, the department's decision is AFFIRMED.

Landis

/s/

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

Date Signed: October 13, 2010

Date Mailed: October 13, 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/SD

cc:

