

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: 2010-44116
Issue No: 2009
Case No: [REDACTED]
Hearing Date:
September 9, 2010
Shiawassee 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 September 9, 2010. 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), retroactive Medical Assistance (retro MA-P) benefits?

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 November 30, 2009, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.
- (2) On April 12, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work.
- (3) On April 19, 2010, the department case worker sent claimant notice that his application was denied.
- (4) On July 15, 2010, claimant filed a request for a hearing to contest the department's negative action.

- (5) On July 29, 2010, the State Hearing Review Team again denied claimant's application stating that it had insufficient evidence and requested an independent physical consultative examination by an internist and a psychiatric evaluation.
- (6) The hearing was held on September 9, 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 January 5, 2011.
- (8) On January 19, 2011, the State Hearing Review Team again denied claimant's application stating in its analysis and recommended decision: the objective medical evidence present does not establish a disability at the listing or equivalence level. The collective medical evidence shows that the claimant is capable of performing sedentary work. The claimant's impairment's 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 past work in sales. Therefore, based on the claimant's vocational profile of a younger individual, 12th grade education and medium work history, MA-P is denied using Vocational Rule 203.30 as a 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 215 pounds. Claimant has a GED and attended trade school for laser beam alignment. Claimant is able to read and write and does have basic math skills.
- (10) Claimant last worked as a professional installer of swing sets. Claimant also worked as a farmer on a horse farm. Claimant was receiving unemployment compensation benefits until March 2, 2010.
- (11) Claimant alleges as disabling impairments: heart disease, arthritis, adult deficit disorder, hearing problems, degenerative disc disease, heart attack in 2007, shortness of breath, and the inability to focus.

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 for approximately 3 years. Claimant is not disqualified from receiving disability at Step 1.

In addition, claimant does receive unemployment compensation benefits. In order to receive unemployment compensation benefits under the federal regulations, a person must be monetarily eligible. They must be totally or partially unemployed. They must have an approvable job separation. Also, they must meet certain legal requirements which include being physically and mentally able to work, being available for and seeking work, and filing a weekly claim for benefits on a timely basis. The Administrative Law Judge finds that claimant has not established that he has a severe impairment or combination of impairments which have lasted or will last the durational requirement of 12 months or more or have kept him from working for a period of 12 months or more. Claimant did last work approximately 3 years before the hearing.

Claimant was receive unemployment compensation benefits until March 2, 2010, which would indicate that claimant held himself out as able to work on the date of application and therefore not disabled. However, this Administrative Law Judge will proceed through this sequential evaluation process for the sake of argument.

The subjective and objective medical evidence on the record indicates that claimant testified that he lives alone in an apartment but has recently received an eviction notice. Claimant is single with no children under 18 and he does not have any income. Claimant has lived off his savings and his family has supported him since March 2, 2010, when his unemployment compensation benefits ended. Claimant does receive Food Assistance Program benefits and he does not have a driver's license and no car and his girlfriend takes him where he needs to go. Claimant testified that he does cook everyday and he is a chef, so he cooks everything including wild game and he grocery shops one time per month and he usually needs help with a ride or lifting the bags. Claimant testified that he does clean his home by doing the bathroom and the kitchen and he likes to fish more than 2 times per month and watches TV 4-5 hours per day. Claimant testified that he can stand for 15-20 minutes at a time and he can sit for hours as long as he shifts around. Claimant testified that he can walk for 10-15 minutes and on some days he walk all day when his back is feeling better. Claimant testified that he cannot squat but he can bend at the waist. Claimant testified that he has arthritis in his knees. Claimant stated that he is able to shower and dress himself but only tie his shoes sometimes and he cannot touch his toes. Claimant testified that his level of pain on a scale from 1-10 without medication is an 8 and with medication is a 6. Claimant testified that he is right handed and he has arthritis in his right hand and arthritis in all of legs and feet joints. Claimant testified that the heaviest weight that he can carry is 15 pounds but he can't do anything repetitively. He does smoke 5 cigarettes per day and his doctor has told him to quit but he is not in a smoking cessation program. Claimant testified that he does drink 12 beers per month and he no longer smokes marijuana. Claimant testified that in a typical day he does house work, he calls his girlfriend and she comes over and cooks, he watches TV and goes for a ride. Claimant testified that he is able to engage in sexual relations and if he does anything strenuous he has to lie down.

This Administrative Law Judge did consider all 78 pages of the original medical packet and the new psychological evaluation and new internist examination in making the decision in this case.

A [REDACTED] internist examination indicates that claimant was alert and cooperative. He was oriented x3. He was in some distress because of his back pain. His weight was 223 pounds and he was 6' tall. His blood pressure was 148/84 in the left arm in a sitting position. Temperature is normal. Respirations are 20, pulse equal 88 per minute with regular good volume. Snell at 20/30 in the right eye, 20/30 in the left eye, and color was within normal limits. HE ENT: normal cephalic. Pupils were equal, round and reactive to light in accommodation. Extraocular muscles are intact. Sclerae were non-icteric. Conjunctivae were clear. Funduscopy is benign. The throat was non-injected. The neck was supple. No evidence of any lymphadenopathy or thyromegaly.

Carotids are bilaterally palpable with no bruit. The chest was normal in contour and configuration. Expansion is good. Percussion is resonant. Breath sounds were vesicular. The heart had no parasternal heave or thrill felt. Heart sounds 1 and 2 are heard. No gallop or murmur. No JVD. No edema. The abdomen soft. Bowel sounds are present and normal. Non-tender to deep palpation. The cranial nerves II-XII are intact. CNS examination was otherwise grossly within normal limits. The claimant has a normal gait. He is not using any accessory muscle devices such as a cane. The impression was a lumbar sprain, mechanical low back pain secondary to osteoarthritis, coronary artery disease and ADHD. The psychological evaluation dated [REDACTED] indicates that claimant was oriented to time, place and person. He could recall 7 digits forward and 4 digits backward. He could recall 3 out of 3 objects after a 3 minute time lapse. He knew his birthday and could correctly name many recent past Presidents. He exhibited average capabilities for general fund of information. He could correctly name many large cities, many currently famous people and 3 current events. He struggled to complete serial 7's. He made 4 mistakes. He exhibited average capabilities for abstract reasoning. He stated that the proverb the grass is greener on the other side of the fence, meant life's better somewhere else. He stated that the proverb, don't cry over spilled milk meant, don't whine about things. He indicated that a bush and a tree were alike and that they were both plants. He indicated that they were different in size. In his judgment he exhibited average capabilities of social judgment and comprehension. He stated that he found a stamped addressed envelope in the street he would mail it. He stated that if he were the first person in a theatre to discover a fire he would yell fire. He was diagnosed with attention deficit hyperactive disorder, a mood disorder with depression, chronic alcohol dependence, cocaine abuse in remission and marijuana dependence. His current GAF was 58 and he would not be able to manage his own funds because it was recommended that he receive assistance and management of his funds until he is completely drug and alcohol free for one year. He is authorized to use medicinal marijuana then that should be taken into consideration. His prognosis was guarded.

A medical examination report dated [REDACTED] indicates that claimant was normal in all areas of examination except for the musculoskeletal where he had muscle tenderness and a history of ADD. He was 5'11" tall and weighed 232 pounds and his blood pressure was 120/92. The clinical impression is that he was stable and he could occasionally lift 50 pounds or more and he could stand or walk about 6 hours in an 8 hour day and sit about 6 hours in an 8 hour day. He could use his upper extremities for repetitive action such as simple grasping, reaching, pushing and pulling and fine manipulating and he could operate foot and leg controls with both feet and legs and he had some limitations of comprehension memory and sustained concentration (pp. 3-4).

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: ADD and depression and focus.

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 a gain 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 its 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. Under the Medical-Vocational guidelines, a younger individual (age 49), with a 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 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 and retroactive Medical 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 Maura D. Corrigan, Director
Department of Human Services

Date Signed: March 15, 2011

Date Mailed: March 16, 2011

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.

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