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

IN THE MATTER OF:



Reg. No: 2010-44530 Issue No: 2009; 4031 Case No: Load No:

Hearing Date: August 25, 2010 Calhoun County DHS

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 August 25, 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 March 1, 2010, clai mant filed an application for Medical As sistance and State Disability Assistance benefits alleging disability.
- (2) On April 26, 2010, the Medical Review Team denied claimant's application stating that claimant's impairments were non-exertional.
- (3) On April 28, 2010, the department case worker sent claimant notice that his application was denied.
- (4) On July 19, 2010, claimant file d a request for a hearing to contest the department's negative action.

- (5) On August 31, 2010. the State Hearing Revi ew Team again denied claimant's application stating in its analysis and recommendation: The claimant has a history of alcohol abus e. He also has myofascial pain syndrome or fibromyalgia. He has tenderness in his spine without evidence of significant neurological abnormalities. He sustained a head injury in January 2010 but the CT scan of the head was negative. A mental status in Marc h 2010 show ed his speech, thought proc ess and associations were normal. Public Law 104-121 is cited due to the materiality of drug and alcohol abus e. The claimant's impairments 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 perform a wide range of simple, unskill ed, light work. In lieu of detailed work history the claim ant will be returned to other work. Therefore, based on the claimant's v ocational profile of a younger indiv idual, limited education and a history of unskilled wo rk SDA is denied using Vocational Rule 202.17 as a guide because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days.
- (6) Claimant is a 49-year-old man whose birth date is Claimant is 5' 71/4" tall and weighs 131 pounds. Claimant attended the 9 grade and has no GED and was in Special Education for ADHD. Claimant is able to read and write somewhat and has a 6th grade education in math.
- (7) Claimant last worked in 2007 as sembling trays and auto parts and he has also worked serving food in a rest aurant and has mostly worked unskilled labor.
- (8) Claimant alleges as disabling impairments: depressi on, pos ttraumatic stress disorder, fibromyalgia, neck injury in 2007, spinal stenosis in 2007, anxiety and paranoia.

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 are found in the Bridg es Administrative Manual (BAM), the Bridges Elig ibility Manual (BEM) 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 Title 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 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 press ure, X-rays);
- (4) Diagnosis (statement of disease or injury based on it s 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 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 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 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 source finding that an individual is "doisabled" 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 regula tions require that s everal considerations be analyzed in s equential order. If disability can be ruled out at any step, analys is of the next step is <u>not</u> required. These steps are:

- 1. Does the client perf orm S ubstantial 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 cli ent is ineligible for MA. If yes, the analysis c ontinues to Step 3. 20 CF R 416.920(c).
- 3. Does the impairment appear on a spec ial listing of impairments or are the cli ent's symptoms, signs, and laboratory findings at least eq uivalent in s everity to the set of medical findings specified for the listed impairment? If no, the analys is 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 subs tantial gainful activity and has not worked since 2007. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidenc e on the record i ndicates that claimant testifi ed that he lives in an apartment and he lives—alone and his apartment is—subsidized. Claimant is separated from his wife and has—no children under 18 living—with him. Claimant has no income and receives—Food Ass—istance Pr ogram benefits. Claim—ant does not have a driver's license and rides with his peer suppo rt and he does not cook. He has—an aid to cook for him and his daughter grocery shops for—him. Claimant testified that he watches television all day and sits ar ound. Claimant testified that he can stand for 5 minutes, sit for 5 minutes and walk a ½ a block. Claimant cannot squat but he can bend at the waist. Claimant testified that he can bathe himself—and dress himself. He cannot tie his shoe s or touch is toes and that he has—gout in his—knees. Claim—ant testified that he

right-handed and he has some problems with reaching and his legs and feet tingle. The claimant's level of pain on a scale from 1 to 10 in an 8/9 and with medication is also an 8/9. Claimant testified that the heaviest weight he can carry i s 5 pounds. Claimant testified that he does smoke 6 cigarettes per day and his doctor has told him to quit and he is not in a smoking cessation program. Claimant admits to drinking one beer per day. Claimant testified in a typical day he gets up at 9:00 a.m. because he tosses and turn s all night, he watches television lying down, goes to the bathroom, takes his medications, eats and sits in misery and pain.

In March 2009 the claimant was noted to hav e chronic neck pain and shoulder pain most compatible with that of myofascial pain syndrom e or fibromyalgia (Page 130). In July 2009 the claimant has full range of motion in his upper extremities with normal stability, strength and tone. Deep tendon reflexes were within normal limits. Sensation was normal (records from DDS). In October 2009 he had tenderness of the cervical and lumbar spinous proc esses (records from DDS). T he claimant was admitted in January 2010 due to a head injury. The claimant had been changing a transmission on a car when the transmission fell and hit the claimant's head. On examination he had full range of motion of the cervical spine (Page 244). He sustained a head injury, contusion, right orbital sinus fracture, left face laceration, left superficial sclera laceration-left ey e and subc onjunctival hemorrhage in the left eye (Page 243). A CT of the head was negative (Page 242). A mental status dated March 2010 showed the claimant's speech was normal. His thought proc ess and associ ations were nor mal. There were no abnormal thoughts (Page 241). His mood and affect were anxious. Diag nosis included major depressive disorder, anxiety disor der and alcohol abuse (Page 240). An MRI of the cervical spine dated August 7, 2009 indicates that claim ant has C4-5 central canal stenosis and C5-6 c entral canal stenosis due to dis c osteophy te formation which ar e unchanged. At these levels there is also bilateral for aminal narrowing. There is new C6-7 mild midline cord contact. The centra I canal does not appear significantly narrow (Page 288).

This Administrative Law Judge did consider all of the medical re ports contained in the file.

At Step 2, claimant has the burden of proof of establis hing 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 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 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 insu fficient to establish that claim ant has a severely restrictive physical impairment.

Claimant alleg es the following disabling mental impairments: posttraumatic stres s disorder, depression, anxiety and paranoia.

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/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 place during the hearing. Claimant was able to answer all of the questions 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 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 hi s 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 sequentia 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 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 than 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 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 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 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 pr ovide 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 mont hs. 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/ps ychiatric evidence contained in 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 plac e during the hearing. Claimant's c omplaints of pain, while pr ofound and credible, are out medical evidence contained in the file as it relates to of proportion to the objective 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 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 limit ed education and an unskilled work history who is limited to light work is not considered disabled pursuant to Medical Vocational Rule 201.17.

The Federal Regulations at 20 CFR 404.1535 speak to the determination of whether 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 whet her a person's drug and alc ohol use is material. It is only when a per son 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 ev idence of DAA, a determination must 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, and alcohol abuse. Ap plicable hearing is the Dr ug Abus e 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 his subs tance 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 Elig ibility Manual contains the following policy statements and instructions for casework ers regarding the State Disability Assistance program: to receive State Disability Assist ance, a person must be disabled, caring for a disable diperson or age 65 or older. BEM I, 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 Stat e 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 conclusion sof 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.

		<u>/s/</u>	
Landis		Y. Lain	
		Administrative Law Judge	
		for Ismael Ahmed, Director	
		Department of Human Services	
Date Signed:_	September 8, 2010	<u> </u>	
	0 1 1 0 0010		
Date Mailed:	September 8, 2010		

NOTICE: Administrative Hearings may or der 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 Hear ings will not orde rarehearing 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 ti mely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

LYL/vc

