

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

IN THE MATTER OF:



Reg. No: 2010-49158
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 22, 2010
Kent 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 22, 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 28, 2010, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On July 6, 2010, the Medical Review Team denied claimant's application stating that claimant's impairments lack duration and approved State Disability Assistance from April through August 2010.
- (3) On July 12, 2010, the department caseworker sent claimant notice that his application was denied.
- (4) On August 10, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (5) On August 24, 2010, the State Hearing Review Team again denied claimant's application stating that it had insufficient evidence and requested all records from the VA Hospital and psychological evaluation.

- (6) The hearing was held on September 22, 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 22, 2010.
- (8) On October 5, 2010, the State Hearing Review Team again denied claimant's application stating in its' analysis and decision: the impairments are medically managed. The claimant retains the capacity to perform at least unskilled medium work. 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 unskilled medium work. This may be consistent with past relevant work. However, there is no detailed description of past work to determine this. In lieu of denying benefits as capable of performing past work as a denial to other work based on a Vocational Rule will be used. Therefore, based on the claimant's vocational profile of a younger individual with 12 years or more of education and an unskilled work history, MA-P is denied using Vocational Rule 203.28 as a guide. Retroactive MA-P was considered in this case and is also denied.
- (9) Claimant is a 34-year-old man whose birth date is [REDACTED]. Claimant is 5'7.5" tall and weighs 190 pounds. Claimant is a high school graduate and spent 9 weeks in college. Claimant is able to read and write and does have basic math skills and was in Special Education for dyslexia.
- (10) Claimant last worked in 2009 for the [REDACTED]. Claimant has worked for a cheese manufacturer, processing cheese and mixing food products.
- (11) Claimant alleges as disabling impairments: bi-polar disorder, anxiety, panic attacks, pelvic injury, and stress fracture in the left pelvis.

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 2009. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates claimant testified on the record that he is single and lives in his parents home and has no children under 18. Claimant testified that he does have a driver's license and drives to the grocery store 2 times per week, about 2 miles. Claimant testified that he cooks when he's asked to, which is about 1 time per week, and he cooks things like hamburger helper. Claimant testified

that he grocery shops 1 time per week, and he has help selecting food and his mother helps him. Claimant testified that he does vacuum, clean the restroom, and do laundry and he mows the lawn 1 time per week with a self propelled push mower. Claimant testified that he plays computer games 2 hours per day and watches TV 3-4 hours per day. Claimant testified that he can stand for a few hours, sit for 3-4 hours and walk less than a quarter mile. Claimant testified that he is able to squat and bend at the waist and shower and dress himself. Claimant can tie his shoes while sitting and he can barely touch his toes. Claimant testified that his level of pain on a scale from 1-10 without medication is a 1 and with medication is a 0. Claimant is right handed and his hands and arms are fine and his legs and feet are fine. Claimant testified that the heaviest weight that he can carry is 25 pounds and he doesn't smoke, drink or do drugs. Claimant testified that in a typical day he lies in bed and watches TV and plays video games on the computer. He has not been hospitalized in the last year.

A psychological evaluation conducted August 26, 2010, indicates that claimant came to the appointment with his father and his posture and gait was normal. Clothing was clean and appropriate and his hygiene was clean, well-groomed and had a full beard. He was 5'7.5" tall and weighed 190. He was on time for the examination. He was reality oriented and he had adequate self-esteem. He had no unusual motor activity and no hyperactivity. His motivation was low. He did not exaggerate or minimize his symptoms and his insight was poor. His stream of mental activity was minimally spontaneous, but not blocked or illogical. He was vague and he articulated clearly. He was well-organized, concrete and circumstantial and his judgment was adequate with poor concentration. He denied hallucinations, delusions, illusions, persecutions and obsessions and compulsions. He feels worthless on occasion but stated that everybody feels that once in a while. Suicide has crossed his mind but he denies any intent or attempts. He was not depressed and not elated but he was anxious. He was not angry, hostile, suspicious, but he was friendly. Claimant was not fearful and stated that he was bored and didn't have anything to do. He was oriented to time person and place and he stated that the date was August 26, 2010. He stated his name and he knew the location. He could remember in immediate memory, 4 numbers forward and 3 numbers backward. In his recent memory, he could remember 2 of 3 items named after a 3 minute lapse in time. The past few presidents, he stated Regan, Bush, Bush and Clinton. His birthday he stated is [REDACTED] and he graduated high school in 1996. He named 5 large cities; New York, San Francisco, Las Vegas, Houston, and Atlanta and Bill Cosby as a comedian, Michael Jordan as a basketball player, Jennifer Granholm as the governor and named Labor Day and the 4th of July as independence day. In his calculations serial 7's were 100, 93 and he couldn't go any further. He stated that $4+8=12$, $7-5=2$, $9*6=54$, $18/3=6$, $9+6=15$, $8-2=6$, $7*4=28$, and $14/2=7$. He did them easily with no errors. In abstract thinking he determined that the grass is always greener on the other side meant that things could be better on the other side of the fence than where you're at, and don't cry over spilled milk meant don't allow yourself to be discouraged that things that happened. He stated that a bush and a tree are alike because they leaves and different because one is usually taller than the other. He stated that both a table and a chair are alike because both allow people to sit on them and they are different because one is for writing on and one is for sitting on. He stated

an orange and a banana are alike because they are both fruit and they are different because they are different fruits. In judgment, if he found a stamped addressed envelope he would mail it, and if he saw a fire in a theatre he would be cautious and wait for the fire alarm sound. He was diagnosed with a panic disorder without agoraphobia and an anxiety disorder and a chronic hip pain due to pelvic fracture. His axis GAF was 60 and his prognosis was guarded and he needed counseling but he wouldn't be able to manage his own benefit funds (pp. B1-B4).

A March 14, 2010, Urgent Care exam indicated that claimant's blood pressure was 136/77, pulse rate 140 and regular, temperature 98.7, pulse oximetry 97%. He had an initial echocardiogram showing ST changes suggesting ischemia (p. 8).

A physician note dated March 15, 2010, indicates that the claimant was afebrile, blood pressure was 137/79 and pulse 108, respirations were 12, and pulse oximetry are 99% on room air. He is a 33 year old Caucasian male who appeared his stated age and appeared non-toxic, in no acute distress. No family or friends currently at his bedside. His head was atraumatic and normocephalic. Eyes: TM's were clear, nares patent, moist mucosa noted. No alcohol is noted on the claimant's breath. The neck was supple without lymphadenopathy. No meningismus. The heart had regular rate and rhythm without murmurs, rubs or clicks. He was tachycardic. The abdomen was soft, non-tender and non-distended with positive bowel sounds. The extremities showed no edema, clubbing or cyanosis. Neuromuscular; the claimant showed no sensory or motor deficits. Reflexes intact. There was no pallor or jaundice. The claimant was relaxed and calm and was discharged. The provision of diagnosis was anxiety with medical non-compliance (p.13).

A CT scan of the chest with contrast indicated that the thyroid glands were normal. There was no superclavicular, axillary, mediastinal, or hilar adenopathy. The pulmonary artery showed no embolism. The aortic on the heart, pericardium, and esophagus are normal. The lungs were clear of any active disease. There was no effusion. The visualized upper abdomen was unremarkable. The impression was a normal contrast CT scan of the thorax. No pulmonary embolism or other acute cardiopulmonary abnormality (p. 14).

This Administrative Law Judge did consider all 160 pages of medical contained in the file in making this decision.

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: bi-polar disorder and anxiety attacks.

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. Under the Medical-

Vocational guidelines, a younger individual (age 34), with a high school education and an unskilled work history who is limited to light work is not considered disabled.

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

2010-49158/LYL

Date Signed: November 10, 2010

Date Mailed: November 12, 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/alc

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