

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 2010-55035
Issue No: 2009
Case No: [REDACTED]
Hearing Date
November 4, 2010
Eaton 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 November 4, 2010. Claimant personally appeared and testified. This hearing was originally held by Administrative Law Judge Jana Bachman. Judge Bachman is no longer affiliated with the State Office of Administrative Hearings and Rules. This hearing was completed by Administrative Law Judge, Landis Y. Lain, by considering the entire record.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and retroactive (MA-P)?

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 February 4, 2010, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.
- (2) On June 7, 2010, the Medical Review Team denied claimant's application stating that claimant could perform prior work.
- (3) On June 11, 2010, the department caseworker sent claimant notice that his application was denied.
- (4) On September 9, 2010, claimant filed a request for a hearing contesting the department's negative action.

- (5) On October 5, 2010, 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 listed or equivalence level. The collective medical evidence shows that the claimant is capable of performing past work as a packer. The claimant's impairments do not meet/equal the intent or severity of a Social Security Listing. The medical evidence of record indicates that claimant retains the capacity to perform past work as a packer. Therefore, based on the claimant's vocational profile of a younger individual, 12th grade education and unskilled work history, MA-P is denied using Vocational Rule 202.28 as a guide. Retroactive MA-P was considered in this case and is also denied.
- (6) A hearing was held on November 4, 2010. At the hearing, claimant waived the time period requested to submit additional medical information.
- (7) Additional information was submitted and sent to the State Hearing Review Team on November 29, 2010.
- (8) On December 9, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommended decision: Newly submitted evidence does not significantly or materially alter the previously recommended decision. 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 past work as a packer. Therefore, based on the claimant's vocational profile of a younger individual, 12th grade education and an unskilled work history, MA-P is denied using Vocational Rule 202.8 as a guide. Retroactive MA-P was considered in this case and was also denied.
- (9) On the date of hearing, claimant was a 22-year-old man whose birth date is April 19, 1988. Claimant is 5'7" tall and weighed 165 pounds. Claimant completed the 12th grade in special education and was able to read and write and does have basic math skills.
- (10) Claimant last worked in March 2010 as a general laborer. Claimant also worked at the [REDACTED], grocery store and discount store, stocking shelves as general labor.
- (11) Claimant alleges as disabling impairments: two liver transplants, lymphoma, and cognitive impairments susceptible to infection.

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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) 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 March 2010. Claimant is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence on the record indicates that claimant testified on the record that he lives with his parents and he has never had a drivers' license. Claimant is able to cook and go grocery shopping and do housekeeping duties. Claimant describes a typical day as getting up at 7 a.m. or so, taking care of his personal needs, having breakfast, watching television, writing songs, and reading books. At 11 p.m., he goes to bed. Claimant testified that he sees friends occasionally. He sees his girlfriend one time per week or more and he works with a youth group at church. Claimant testified that he can walk one mile or less, sit for ten minutes at a time and that his hips hurt and it's hard to stand up straight. Claimant testified that he can sit

for hours. The heaviest weight he can carry is ten pounds. Claimant testified that he is right handed and that he does not smoke or do any drugs. Claimant testified that he does drink alcohol but he would not say how often he would drink. Claimant's daughter testified that claimant has poor fine and gross motor skills and he just writes things down. His writing is illegible. He lives in a fairytale world. Claimant can load the dishwasher with a little difficulty. He does not know where the dishes go. He lacks cognitive special skills to place dishes in an organized way. He has poor memory even though he does the task daily. Claimant's mother testified that claimant likes to work but that he does not completely understand the consequences of a liver transplant and that he has pain in his hips like an old man and that his stomach was 30 years older than his chronological age. He needs to be refocused on any tasks. The claimant underwent a liver transplant two times 11 years old and 19 months of age. He was diagnosed with non-Hodgkin's lymphoma in 2005 currently in remission. The physical examination done on April 2010 reported mild tenderness in the abdomen with no organomegaly. He has normal range of motion of all joints and was neurologically intact. (Pages 20 to 22.) A special blood test showed his liver enzymes level were within normal limits (page 23). On May 2010, the mental examination reports he had average intelligence with no thought disorder. He had the ability to understand, retain and follow simple instructions (pages 15 through 19). On March 11, 2010, it was submitted and supported the claimant was receiving benefits. (Pages 1 and 2.) Also, a psychological evaluation from July 2007 showed that the claimant's intelligent functioning was below average. Claimant's [REDACTED], medical director, of Barry Eaton District Health Department indicates that claimant has cognitive deficits which make it very difficult for him to understand or complete forms on time. He is able to work but only if his complex medical issues are being attended to. He must follow with [REDACTED] transplant team and lymphoma clinic on a regular basis. He is almost out of anti rejection medications from [REDACTED] and must follow with samples and then get them from prescription assistance program. (Page 2.) A May 4, 2010 psychological evaluation states that claimant has a current GAF of 53 and was diagnosed with adjustment disorder with mixed features, attention deficit hyperactivity disorder and a mathematics disorder, and he exhibited moderate psycho-social stressors associated with complex, multiple medical issues, physical and functional limitations, financial difficulties with lack of proper insurance and access to ongoing medical care and functional limitations. He would be able to manage. His prognosis was guarded. Claimant was oriented to time, place and person. He could recall five digits forward and four digits backward. He can recall three out three objects after a three-minute time lapse. He knew his birthday and could correctly name four recent past presidents. He exhibited average capabilities of general fund information. He could correctly name many large cities, many famous people and three current events. He could not complete serial 7's, he struggled a great deal with this task. He is able to complete any number in a sequence correctly. He exhibited average capabilities for abstract reasoning. He stated that the proverb, "the grass is greener on the other side of the fence" meant you think life is better. He stated that the proverb "spilled milk" meant don't let little things bug you. In similarities and differences, he indicated that a bush and a tree were a like in that they were both plants. He indicated that they were different in size.

In judgment, he exhibited average capabilities for social judgment, comprehension. He stated that if he found a stamped, addressed envelope in the street, he would mail it. He stated that if he would discover a fire, he would call 911. He did not exhibit evidence of significant levels of depression or anxiety, but he exhibited evidence of agitation, family discord and persistent worries, stress about his medical condition and medical future. He did not exhibit evidence of hallucinations, delusions or obsessions. He denies suicidal ideation. He did not exhibit evidence of illogical, bizarre or circumstantial ideation. There is no evidence of a thought disorder. He was cooperative during the evaluation. He did not exaggerate or minimize his symptoms. He was restless and distracted during the evaluation. (Pages 15 and 17.)

On April 16, 2010 Medical Examination Report indicates that the physical examination revealed a well-developed, well-nourished gentleman in no acute distress. Height is 67 inches, weight is 148 pounds. Pulse is 81. Blood pressure is 117/65. Respiratory rate is 18 and unlabored. HEENT, PERRLA, ELM intact. TMS pearly grey. Nares and pharynx are unremarkable. Discs are not evaluated. The neck was supple with adenopathy, thyromegaly, bruits or jugular venous distention. The skin was unremarkable. No evidence of icterus. The chest was clear. The breath sounds were equal. The heart had regular rate and rhythm. The abdomen, there were deep and wide healed incisions from two liver biopsies. He has diffused mild tenderness of his entire abdomen without any rebound. He advises this is a cyclonic ongoing HUP. He has no gross masses or organomegaly noted. No CDA tenderness. The distal extremity has good pulses and no pedal edema. (Page 21.)

In the musculoskeletal area, patient has a slow but normal range of motion in the neck, back, shoulders, elbows, wrists, hands, hips, knees, ankles and feet. He can heel toe tandem, get on and off the exam table without difficulty. The neurologic area was essentially unremarkable. The assessment was a history of liver cirrhosis, a history of biliary atresia, status post liver transplant x2. He has an element of nine disabilities, ADHD, and he has a history of alcohol abuse, and according to him, he stopped drinking as of February 2010. He has also recovered from non-Hodgkin's lymphoma, has been cancer free since 2005. (Page 22.)

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. The clinical impression that claimant is currently 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, the 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: anxiety, and attention deficit hyperactive disorder.

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 mental limitations resulting from his reportedly depressed state. There ***is no*** Mental Residual Functional Capacity Assessment in the record. 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 past relevant work. There is insufficient objective medical evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work which he has engaged in, in the past. Therefore, if claimant had not already been denied at Step 2, he would again be denied 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 [REDACTED], published by the [REDACTED]... 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).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

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. Claimant did testify that he does receive relief from his pain medication. 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 22), with a high school education and

an unskilled work history who is limited to light work is not considered disabled pursuant to Vocational Rule 203.28.

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 drug 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 her substance abuse is material to her alleged impairment and alleged disability.

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.

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.

/s/_____

Landis Y. Lain
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: May 24, 2011

Date Mailed: May 25, 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.

LYL/tg

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