

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]

Claimant

Reg. No: 2010-9288

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 11, 2010

Wayne 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 February 11, 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 June 19, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On October 28, 2009, the Medical Review Team denied claimant's application stating that claimant's impairments are nonexertional.

(3) On September 22, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On October 26, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On December 18, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work and is capable of performing unskilled work per 20 CFR 416.968(a).

(6) Claimant actually asked for the hearing on October 26, 2009, before the Medical Review Team made a decision, because the Medical Review Team had taken so long to make a decision.

(7) Claimant is a 21-year-old man whose birth date is [REDACTED]. Claimant is 6' 3" tall and weighs 175 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills.

(10) Claimant last worked in February 2008 for [REDACTED] in the produce department. Claimant has also worked at [REDACTED] as a bagger.

(11) Claimant alleges as disabling impairments: bi-polar disorder and diabetes mellitus Type I.

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

The objective medical evidence in the record indicates that a mental status evaluation report, dated September 30, 2009, indicates that claimant showed a cooperative behavior and his self-esteem is good at the time. He showed normal motor activity and was relaxed and seemed not to be misrepresenting himself. He does not have much insight. His stream of mental activity was spontaneous, logical and organized with normal speech. He had no hallucinations, delusions or no related thought pathology was observed, reported or suspected. He denies suicidal or homicidal ideas. He showed no acute emotional distress and had good affect. He was oriented to time, person and place. He could repeat 7 numbers forward and 4 numbers backward, immediately. He recalled 1 of 3 objects after 3 minutes and he knew the current president, the one before him and the governor's name. He knew his birth date and his Social Security number by memory. He named five large cities as Atlanta, New York, Seattle, L.A. and Detroit. He named three famous, living people as Michael Jackson, Curt Cobane and Wayne Grasia, but didn't understand that two people he named were already dead. He named two news events, the Lion's won that there was terrorism recently found. He correctly stated 11 plus 7 and two times 8, but he did not know 24 divided by 8. He spelled the word "world" backwards, correctly, "d-l-r-o-w." He did not do serial 7's from 100. He said he did not know how to do them and was

not good at math, but he did serial 3's in 30 seconds with 30, 28, 26, 24. The translation of the proverb, the grass is always greener on the other side of the fence was, "things would get better over time," and the translation of the proverb, "don't cry over spilled milk" was that "there were bigger things to worry about than something small." When asked how a bush and a tree are alike, he said, "that they are both plants." When asked how a bush and a tree are different, he said, "one stands upright and a bush is more on the ground." If he found a stamped, addressed sealed envelope on the sidewalk, he would "put it in the mailbox." If a fire was discovered in a crowded movie theatre, he would "call 911." His plans for the future are to go to college and study business or community technology. The impression was: claimant is a 21-year-old with reported bi-polar disorder with somewhat rapid shifting in mood swings and happy highs to unpleasant lows and angry irritability. He showed normal abilities to understand, remember and carry out instructions as measured by the MSE. He would be able to handle financial matters independently. He feels his disorders are controlled at the time by his treatment but he needs assistance to continue his treatments. It is his opinion that he would be able to work and he states that he feels he could work at things like gardening, lawn maintenance, warehousing and in a grocery store. His AXIS GAF was 60 and his prognosis was guarded (Pages 8, 9).

On February 2, 2009, he was admitted to the hospital for suicidal ideas and depression. He appeared depressed and angry. He talked mainly about conflicts with his father and some other relatives. He referred to some physical fights with his father. On February 4, 2009, he appeared angry and frustrated. He was complaining about his parents not wanting him back in the house and he was reluctant to go to a group home. He said he had a friend that might be willing to take him in his house, but apparently that had to be discussed with the friend's mother. On February 6, 2009, the patient appeared calm and in a fairly good mood but he said that he was still trying to get in touch with his friend, and if he could not go to a friend's house he would

accept placement in a group home. The final arrangements for the patient in a group home were made and the patient was discharged February 6, 2009, with a diagnosis of bi-polar disorder and personality disorder. He was improved upon discharge and his prognosis was guarded.

(Pages 11-12)

A mental residual functional capacity assessment in the record, dated June 30, 2009, indicates that claimant was moderately limited in most areas. He was markedly limited in the ability to accept instructions and respond appropriately to criticism from supervisors and in the ability to work in coordination with or in proximity to others without being distracted by them.

(Pages 18,19) Claimant was given an AXIS GAF of 50, which was improved from last year when he had 40. He was diagnosed with bi-polar disorder, poly-substance dependence, and diabetes.

Medical reports dated September 30, 2009, indicate claimant stated that he last used alcohol in October 2008, and that he has not had a drinking period. He had abused marijuana, LSD and cough syrup on and off, but had not had any in approximately one year.

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/psychiatric evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant has Type I diabetes, but his diabetes appears to be controlled by medication and he does not have any physical impairments. Claimant testified that he is able to cook and he usually can cook canned things or microwave food. Claimant testified that he lives with his parents and that he doesn't have any income. He does have a driver's license and drives one time per week to the store, which is about a mile away. Claimant testified that he watches television two hours per day and does no chores. Claimant testified that on a typical day he wakes up and goes and takes a walk

and looks for a job, then he hangs out with friends. He eats dinner and then hangs out with friends and the end. He goes sledding or goes to the mall. The claimant testified that he has no limits on his ability to sit, stand, walk or squat. Claimant can bend at the waist, shower and dress himself, tie his shoes and touch his toes, and he has no pain. Claimant is right-handed and testified that his hands and arms are fine and his legs and feet are fine. This Administrative Law Judge finds the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

There is evidence in the record that claimant suffers from a bi-polar disorder, but the mental residual functional capacity assessment in the record indicates that claimant is only moderately limited in most areas and markedly limited in only two areas. It should be noted that claimant has a history of poly-substance abuse, and if he remains drug free and continues to take his medication as directed, that he is stable. The evidentiary record is insufficient to find that claimant suffers from 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. Claimant could work as a bagger or as a stocker at a grocery store even with his impairments. Neither of these jobs require strenuous physical exertion and there is not medical reason 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 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).

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).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

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 medium, light or sedentary tasks if demanded of him. Claimant has no physical restrictions. Claimant's activities of daily living do not appear to be very limited and he should be able to perform medium, light or sedentary work even with his impairments.

The Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) is material to a person's disability and when benefits will or will not be approved. The regulations require the disability analysis be completed prior to a determination of whether a person's drug and alcohol use is material. It is only when a person meets the disability criterion, as set forth in the regulations, that the issue of materiality becomes relevant. In such cases, the regulations require a sixth step to determine the materiality of DAA to a person's disability.

When the record contains evidence of DAA, a determination must be made whether or not the person would continue to be disabled if the individual stopped using drugs or alcohol. The trier of fact must determine what, if any, of the physical or mental limitations would remain

if the person were to stop the use of the drugs or alcohol and whether any of these remaining limitations would be disabling.

Claimant's testimony and the information contained in the file indicate that claimant has a history of alcohol and drug abuse. Applicable herein is the Drug Abuse and Alcohol (DA&A) legislation, Public Law 104-121, Section 105. The Law indicates that individuals are not eligible and/or 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 based upon claimant's drug use that even if he were to be considered disabled based upon a mental impairment, 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 impairments and alleged disability.

Claimant testified on the record that he does have a bi-polar 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 contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. In addition, based upon claimant's medical reports and his testimony, it is documented that he had use of alcohol as well as drug abuse (LSD, cough syrup, pain killers and mushrooms), which would have contributed to any physical and any alleged mental problems. Claimant has no complaints of pain. 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 medium, light or sedentary work even with his impairments. Under the Medical Vocational Guidelines, a younger individual (age 21) with a high school education and an unskilled work history who is limited to medium work is not considered disabled.

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.

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 this case by a preponderance of the evidence.

