

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: 2010-10501

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 25, 21010

Bay 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 February 25, 2010. Claimant personally appeared and testified. Claimant was represented at the hearing [REDACTED]

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 12, 2009, claimant filed an application for Medical Assistance, State Disability Assistance and retroactive Medical Assistance benefits to April 2009, alleging disability.

(2) On August 18, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On August 25, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On November 9, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On December 17, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of medium work per 20 CFR 416.967(c) pursuant to Medical Vocational Rule 203.25.

(6) Claimant is a 48-year-old man whose birth date is [REDACTED] Claimant is 5' 8" tall and weighs 160 pounds. Claimant attended the 9<sup>th</sup> grade and has no GED. Claimant can read somewhat and stated that he cannot count money and he doesn't have basic math skills.

(7) Claimant last worked in 2005, making travels for recreational vehicles and building countertops in house trailers. Claimant has also worked as a carpet layer.

(8) Claimant alleges as disabling impairments: hypertension, subdural hematoma, back pain, seizures, sciatica, occipital fracture, depression, anxiety, arthritis and substance abuse, as well as a traumatic brain injury.

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

The objective medical evidence on the record indicates that on January 1, 2009, claimant fell from a roof and suffered head trauma.

A June 30, 2009, Medical Examination Report indicates that claimant weighed 160 pounds. His lungs were clear and his heart had regular rate and rhythm. Per the neurological examination: Cranial nerves show a few beads of nystagmus on lateral gaze. Motor examination is 5/5. Coordination: There were some tremors on finger to nose testing. Gait is slightly wide-based but not grossly ataxic. There is no dystonia or dyskinesia. No long-tract signs. (page 82)

An [REDACTED] hospital admission indicates that claimant's vital signs were stable, his blood pressure was 113/70, his pulse was 50, respirations 20. Patient's general appearance was well-maintained. His mood and affect were normal. He was oriented x3. His attention span was normal. He did not have any language dysfunction. Gait was intact. His motor examination was unremarkable. His reflexes were symmetrical. His sensory examination was unremarkable. His tone and coordination were maintained.

A CT scan of the hearing, dated April 7, 2009, shows a right parietal subdural hematoma which has increased in size. The impression was of right frontal subdural hematoma, history of allergies, congestion, and abuse, and history of hyponatremia. Claimant was admitted for

elective right craniotomy and evacuation of the subdural hematoma. (page 79) Claimant's post-operative was uneventful. He was sent home with discharge plan. (page 78)

A Medical Examination Report of January 23, 2009, indicates that claimant was treated for alcohol withdrawal. His mental status state: reasonably unremarkable. Vitals were okay. He was discharged home to continue pain medication. He had a cervical collar on. He had a little blood in both nares, but no septal hematoma. Poor dentition. Chest was clear. Abdomen was unremarkable. No gross deformities. His CT showed subdural hematoma, non-depressed occipital fracture, multiple broken ribs, and fracture of the left scapula. He was admitted, seen by a PCIM in neurosurgery. (page 75)

A CT of the chest was performed January 4, 2009. Impression was minimal scarring in the right lung base and no active pulmonary disease. (page 73)

Another radiology consultation of January 3, 2009, indicates minimal atelectatic changes in both lower lobes. No pneumothorax. No congestive heart failure, and a rib fracture, and a rib fracture, and a rib fracture, and a rib fracture. (page 72)

An MRI of the brain, conducted on February 17, 2009, indicates stable, probably chronic subdural collection on the left to compare to the right, to the previous examination. Cannot exclude increase in right side, subdural collection was compared to the right, with minimal increased signal on the right side at mastoid air cells. (page 34)

A Medical examination report of January 21, 2010, indicates that claimant's weight was 157 pounds, his lungs were clear, he had prolonged expiratory phase, his heart revealed a regular rhythm. Neurologically, he was alert and anxious. He was not as tense as he was last time. He has intact cranial nerves. He has a tremor on finger to nose testing, no ataxia, no dystonia or dyskinesias. There was an EEG repeated, which was completely unremarkable and specifically showed no evidence of an epileptic focus. The doctor was concerned that claimant was Dilantin-

toxic because he was non-compliant with his medication. On neurological examination, he was alert, his speech was fluent, he was somewhat tense in appearance, he appeared anxious. He had some mild tremor in finger to nose testing, but no gross ataxia. (New Information, page 1, 2)

On March 5, 2010, the State Hearing Review Team again denied claimant's application stating that the claimant has a history of alcohol abuse, and that he fell off a roof and had a subdural hematoma. In April 2009, he underwent a craniotomy and frontal burhole for evacuation of a subdural hygroma. He was neurologically intact following this surgery. He reports possible seizures. He had an unremarkable EEG. The doctor indicated his episodes do not sound suggestive of epilepsy but did continue his [REDACTED]. He also indicated that claimant had been somewhat noncompliant. 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 a wide range of simple, unskilled medium work, avoiding unprotected heights and dangerous moving machinery. In lieu of detailed work history, the claimant will be returned to other work. The State Hearing Review Team indicated that based upon the claimant's vocational profile of a younger individual, limited education and a history of unskilled work, MA-P was to be denied using Vocational Rule 203.25 as a guide. Retroactive MA-P was also considered in the case and was also denied. State Disability Assistance was to be denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above-stated level for 90 days.

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. In addition, claimant did fall from a roof on January 1, 2009. Although he had some serious injuries at that time, the

medical reports indicate that claimant does not appear to have severe residual problems and therefore, claimant's impairments do not meet duration also. 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 is not 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.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers severe mental limitations resulting from his reportedly depressed, and anxious state.

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 a 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. Claimant's impairments do not meet Listing 11.04 as suggested by [REDACTED]

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's past relevant work was light or medium 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 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.

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 tobacco 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 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 has anxiety and depression and paranoia, and chronic pain.

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, it is documented that he had heavy use of alcohol as well as alcohol withdrawal, which would have contributed to his physical and any alleged mental problems.

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 48), with less than a high school education and an unskilled work history who is limited to light 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.

Accordingly, the department's decision is AFFIRMED.

Adm  
Departm

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/s/  
Landis Y. Lain  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: June 02, 2010

Date Mailed: June 3, 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/cv

cc:

