

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: 2010-17269

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 4, 2010

Barry 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 March 4, 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), retroactive Medical Assistance 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 September 14, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On December 15, 2009, the Medical Review Team denied claimant's application stating that claimant's impairments lack duration.

(3) On December 16, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On December 28, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On February 10, 2010, the State Hearing Review Team again denied claimant's application stating that claimant has a history of substance abuse and dependence, and depression. In February 2010, the claimant's grooming was poor and he was malodorous but his mental status was otherwise unremarkable. The claimant has Crohn's disease and a seizure disorder. He was able to walk normally in February 2010. In September 2009, he had good strength in his right upper extremities. Public Law 104-121 is cited due to the materiality of drug and alcohol abuse. 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 light work avoiding unprotected heights and dangerous moving machinery. In lieu of detailed work history, the claimant will be returned to other work. Therefore, based on the claimant's vocational profile of a younger individual with a high school education and history of unskilled work, MA-P is denied using Vocational Rule 202.20 as a guide. Retroactive MA-P was also considered in this case and is also denied. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not prevent all work activity at the above-stated level for 90 days.

(6) The hearing was held on March 4, 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 March 8, 2010.

(8) On March 15, 2010, the State Hearing Review Team again denied claimant's application stating that the case was returned from the Office of Administrative Hearings with new evidence. The new evidence was a one-page, third-party statement and a duplicate electroencephalogram. This new evidence does not materially alter the prior determination of the State Hearing Review Team. Public Law 104-121 is cited due to the materiality of drug and alcohol abuse. 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 light exertional work that does not require the use of ladders, scaffolding or ropes and avoidance of dangerous moving machinery and unprotected heights. The claimant also retains the ability to perform simple and repetitive tasks. Therefore, based on the claimant's vocational profile of a 43 years old, high school education and a history of meeting semi-skilled employment, MA-P is denied using Vocational Rule 202.20 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not prevent all work activity at the above-stated level for 90 days. Listings 5.02 and 5.06, 11.02 and 11.03 and 12.04, 12.06 and 12.09 were considered in this determination.

(9) Claimant is a 43-year-old man whose birth date is [REDACTED] Claimant is 5' 5" tall and weighs 125 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 July 2009 as a technician in a tool and die business. Claimant received a \$ [REDACTED] Workers Compensation benefit in 2007 so he did not work for 2004 or 2007. Claimant also worked as a machinist.

(11) Claimant alleges as disabling impairments: Crohn's disease, a perforated bowel, seizures, anxiety, depression, substance abuse, and back pain.

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 2005. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a March 13, 2010 Medical Examination Report indicates that claimant's blood pressure in the right arm was 110/70 and left arm is 110/70. The pulse was 90 and regular. Respiration was 18. Weight was 135 pounds. Height was 62.25" with no shoes. The patient was cooperative throughout the exam. The hearing appeared normal and speech was clear. Gait was normal. The patient does not use an assistive device for ambulation. The patient has had bowel movements today and they are normal for him.

Skin: The patient had an abdominal T-shaped scar that is consistent with his surgical history. There is no cyanosis or clubbing. Eyes: Visual acuity in his right eye is 20/50 and left eye 20/50, without glasses. The sclera were not icteric nor was there any conjunctival pallor. Pupils are equal and reactive to light and accommodation. The fundus appeared normal. The neck was supple with no thyroid masses or goiter. No bruits were appreciated over the carotid arteries. There is no lymphadenopathy. The chest AP diameter was grossly normal. Lungs were clear to auscultation without any adventitious sounds. The sound was normal S1 and S2. No murmurs or gallops were appreciated. The heart did not appear to be enlarged clinically. The PMI is not displaced. In the abdomen, the patient's belly was slightly distended for the patient's very thin body habitus, consistent with Crohn's disease. There are no masses felt nor is there enlargement of the spleen or liver. The patient is not having any abdominal pain that is abnormal to him. In the extremities, in the musculoskeletal area there were no bony deformities. Peripheral pulses were easily palpated and symmetrical. There is no edema. There is no evidence of varicose veins. Range of motion of all joints checked is full. There is no tenderness, erythema or effusion of any joint. Grip strength is normal. The hands have full dexterity (page A3). In the neurological area, motor and sensory functions remain intact. Reflexes are present and symmetrical. No disorientation was noted. The patient did not exhibit any seizure like activity during the examination. He was able to converse with the examiner without any tangential or circuitous thought (page A4).

A mental status examination conducted February 1, 2010 indicates that claimant was a slender, white male with a mustache and longer than average hair. Claimant walked normally and was dressed in blue jeans, t-shirt, white socks, tennis shoes and a frayed winter coat. Claimant displayed poor grooming and was malodorous. Claimant's reality testing and motor

activity were normal. He did not display any unusual or bizarre behaviors and did not exaggerate symptoms. Claimant was soft-spoken but intelligible. Thoughts were organized, coherent and goal-directed. Claimant has a history of suicidal ideation but no reports of hallucinations, delusions or referential beliefs. Claimant showed a depressed and dysphoric affect. He was oriented to time, person and place and situations. He repeated 6 digits forward and 3 digits backward (page 383). Memory: After a delay of 3 minutes and 15 seconds, claimant retained only 1 of 4 words. He named Barac Obama as the president. He gave his date of birth as [REDACTED]. He named large cities as Detroit, New York City, Grand Rapids and San Francisco; and current famous people as Jay Leno and the Rolling Stones. Current events, he named “that earthquake.” For calculations, he stated 5 plus 7 equals 12, 6 times 4 equals 24 and 15 divided by 3 equals 5. In abstract thinking, he stated that don’t count your chickens before they have hatched, means “try not to make plans before you know they can be done” and strike while the iron is hot means “try to do the task while it’s fresh in your mind.” In similarities and differences: a dog and a lion are alike because “both have four legs” and a lion and a dog are different because “a lion is a type of pet and a dog is a type of dog.” In judgment: If the claimant were lost in the woods in the daytime, he would try to figure out which way the sun was going” and the reason for changing batteries in a smoke detector is “so that in case you have a fire, it would work.” He was diagnosed with a major depressive disorder, severe without psychosis and alcohol dependence in sustained full remission, cannabis dependence and nicotine dependence. He was given a GAF of 50 (page 384). The psychologist indicated that claimant does have memory problems which could stem from the epilepsy or from his general health conditions. He has ongoing health problems that restrict many of his activities but he would be able to manage benefit funds (page 385).

An adult neurology report of September 24, 2009 indicates that on examination, claimant has a pre-existing diagnosis of Crohn's disease with pancreatic insufficiency related to the Crohn's, apparently as well as chronic pain disorder. The examination revealed a thin man who appeared to be in no acute distress. He appeared to be chronically ill. Blood pressure was 122/80 in the right arm and 120/74 in the left. There was a mild right pronator drift. Visual fields were full, the disks were flat, facial movement was symmetric. He had good strength in his upper extremities. Reflexes are increased on the right as compared to the left in the upper extremities. Lower extremity reflexes are 2+. He was instructed to start Vitamin D. He was able to remember 2 or 3 words and 1 number after 2 minutes (page 387).

This Administrative Law Judge did read the entire file, which included approximately 400 pages of medical reports.

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; 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: anxiety and depression.

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 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), with a high

school education and an unskilled work history who is limited to light work is not considered disabled.

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 tobacco, drug, and alcohol 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.

It should be noted that claimant continues to smoke despite the fact that her doctor has told her to quit. Claimant is not in compliance with her treatment program.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial gainful 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.

