

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 2010-17393

Issue No: 2009, 4031

[REDACTED]

Berrien County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain for Marlene Magyar

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 9, 2010. Claimant and his patient advocate from Disability Networks of Southwest Michigan appeared and testified at the hearing on claimant's behalf.

This hearing was originally held by Administrative Law [REDACTED]. [REDACTED] is no longer affiliated with the Michigan Administrative Hearing System Administrative Hearings for the Department of Human Services and this hearing decision was completed by Administrative Law [REDACTED] 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 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 November 23, 2009, claimant filed an application for Medical Assistance, State Disability Assistance, and Retroactive Medical Assistance benefits alleging disability.
- (2) On January 6, 2010, the Medical Review Team denied claimant's application stating that claimant's impairments lacked duration.

- (3) On January 8, 2010, the department caseworker sent claimant notice that his application was denied.
- (4) On January 21, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (5) On February 11, 2010, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing his past work as a Janitor.
- (6) The hearing was held on March 9, 2010. At the hearing, claimant waived the time periods and requested to submit additional medical information.
- (7) On the date of hearing, claimant was a [REDACTED] whose birth date is September 9, 1973. Claimant is tall and weighs pounds. Claimant is a high school graduate. Claimant is able to read and write and does have basic math skills.
- (8) As of December 14, 2009, claimant was working doing building maintenance. Claimant has always done custodial or janitorial work.
- (9) Claimant alleges as disabling impairments: mental illness, right hand injury and poor circulation of the leg.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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. Claimant just started a Step-up Program at [REDACTED] to assist claimant to work and live independently that claimant lives on the street has been doing so for 1 ½ - 2 years and he has a 7-year old daughter who lives with her mom and is in compliance with his Mental illness medications but has significant social problems. He was working as a church janitor for 4 hours. Claimant is not engaged in substantial gainful activity and is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence on the record indicates that a July 23, 2009, [REDACTED] evaluation indicates that on examination claimant's blood pressure was 130/80 left arm was 130/80. Pulse equals 80 and regular, respiration equals 20, and weight was 211 pounds, height 72" with no shoes. The patient was pleasant and cooperative throughout the examination. Hearing appears normal and speech is clear. Gait exhibited a mild left limp. The patient does not utilize an assistive device for ambulation, nor requires one at this time. The skin there was no lesions appreciated, nor is there cyanosis or clubbing. The eyes visual acuity the right eye 20/20 and left eye 20/20 without correction. The sclerae are not icteric, nor is there any conjunctival pallor. Pupils are equal and reactive to light and accommodation. The neck was supple with no thyroid masses or goiter. No bruits are appreciated over the carotid arteries. There is no lymphadenopathy. The chest AP diameter is grossly normal. Lungs are clear to auscultation without any adventitious sounds. The heart has normal S1 and S2 are heard. No murmurs or gallops are appreciated. The heart does not appear to be enlarged clinically. The PMI is not displaced. The abdomen was flat and non-tender without distention. There were no masses felt, nor is there enlargement of the spleen or liver. In the extremities and musculoskeletal there are no gross bony deformities. Peripheral pulses are palpated and symmetric. There is trace edema in the bilateral lower extremities, non-pitting in nature. There is no evidence of varicose veins. There is no gross effusion of any joint appreciated. Homan's sign is negative. The knee flexion and extension were normal and the ankle dorsi-flexion was normal on the right and left and plantar-flexion was also normal on the right and left. The bilateral hands have full grip strength and full digital dexterity. The patient exhibits mild difficulty getting on and off the examination table, mild difficulty performing heel and toe walking, as well as moderate difficulty performing squatting. Straight leg testing was negative bilaterally. No paravertebral muscle spasms were noted. The neurological area Romberg testing was negative. No focal deficits were appreciated. Deep tendon reflexes are within normal limits, 2/4 globally. The patient has normal motor strength in the upper extremities, 5/5 bilaterally. The patient has slightly decreased motor strength in the lower extremity, 4+/5 and 4/5 in the left lower extremity. There is mild decreased pinprick sensation noted in the left lower extremity, distal to the knee. The conclusion is a history of lower extremity joint pain. The joint range of motion appears unremarkable. The patient demonstrates mild to moderate difficulty with orthopedic maneuvers. The patient demonstrates mild decreased motor strength in bilateral lower extremities, and mild left limp with ambulation. There is trace edema in the bilateral lower extremities. Deep tendon reflexes as well as peripheral pulses are unremarkable. (Dept Exhibit 3 Page 1-3)

A psychiatric psychological evaluation from Disability Determination Services dated July 8, 2009, indicates that claimant is approximately 5' 9" tall and weights 250 pounds. His posture and gait were normal, he was adequately mannered and his clothing and hygiene were appropriate for the situation. He wore black shorts and a black T-shirt to his appointment. He was brought to the appointment by a friend of his sister and was on time for his evaluation. The claimant demonstrates an adequate contact with reality and reports a low level of self-esteem. His motor activity was nervously agitated, he appears to be dependent on others for all of his basic needs, and he demonstrates limited levels of insight. The claimant's mental activity was spontaneous and organized. Claimant

reported some auditory and visual hallucinatory experiences. He also believes that others are out to get him. He reports some delusional thinking, but denies any obsessions or unusual powers. He denies that others control his thoughts. When questioned about suicide, the client states that he last considered suicide the day of his evaluation. He denies any history of suicide attempts. The patient's emotional reaction was angry. Claimant was oriented to time and person. In immediate memory he remembered 0 numbers forward and 0 numbers backwards, and in recent memory he remembered 0 out of 3 numbers. For the past few presidents he stated [REDACTED] and for his birth date he said "he didn't know". He named 5 large cities as [REDACTED] and he didn't know. He named famous people as [REDACTED] and him and he didn't watch television so he didn't know if any current events. Claimant testified $2 \times 2 = 6$, $3 \times 6 =$ "I don't know", $7 \times 5 = 35$, $8 \times 4 =$ "I don't know". The grass is greener on the other side of the fence, he stated "someone takes care of the grass" and don't cry over spilled milk means "don't spill your milk", and what goes around comes around means "it may not come back around again". In similarities and differences when asked how a bush and a tree are alike, he stated, "They both grow and that they are different because one is green". In judgment he stated "If he found a self-addressed envelope he doesn't read to good and if he found a fire in the theater he would try to get out and he hadn't thought about the future". He was diagnosed with a psychotic disorder, mood disorder, alcohol abuse, intermittent explosive disorder, cognitive disorder, he had a current GAF of 45, he presented as a somewhat angry individual. His presentation was somewhat odd and the examiner left with some questions regarding the claimant's veracity regarding his statements. He seems to have significant problems in his emotional functioning and is likely to have a great deal of difficulty maintaining stability in employment or other aspects of his life. His overall prognosis is poor and he would not be able to manage his own benefit funds. (Dept Exhibit 3 Pages 4-8) It appears from the record that the Social Security Administration denied claimant's application for SSI and RSDI benefits on August 21, 2009.

At Step 2, claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. There is insufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant has reports of pain in multiple areas of his body; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. There are no laboratory or x-ray findings listed in the file which support claimant's contention of disability. 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: mental illness, depression, and psychosis.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers severe mental limitations. There is no mental residual functional capacity assessment in the record. There is insufficient evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. Claimant was oriented to time, person and place during the hearing. Claimant was able to answer all of the questions at the hearing and was responsive to the questions. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. For these reasons, this Administrative Law Judge finds that claimant has failed to meet his burden of proof at Step 2. Claimant must be denied benefits at this step based upon his failure to meet the evidentiary burden.

If claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of claimant's condition does not give rise to a finding that he would meet a statutory listing in the code of federal regulations.

If claimant had not already been denied at Step 2, this Administrative Law Judge would have to deny him again at Step 4 based upon his ability to perform his past relevant work. There is no evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work in which he has engaged in, in the past. Therefore, if claimant had not already been denied at Step 2, he would be denied again at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

Claimant has submitted insufficient objective medical evidence that he lacks the residual functional capacity to perform some other less strenuous tasks than in his prior employment or that he is physically unable to do light or sedentary tasks if demanded of him. Claimant's activities of daily living do not appear to be very limited and he should be able to perform light or sedentary work even with his impairments. Claimant has failed to provide the necessary objective medical evidence to establish that he has a severe impairment or combination of impairments which prevent him from performing any level of work for a period of 12 months. The claimant's testimony as to his limitations indicates that he should be able to perform light or sedentary work.

There is insufficient objective medical/psychiatric evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. Claimant was able to answer all the questions at the hearing and was responsive to the questions. Claimant was oriented to time, person and place during the hearing. Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to claimant's ability to perform work. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity. Claimant is disqualified from receiving disability at Step 5 based upon the fact that he has not established by objective medical evidence that he cannot perform light or sedentary work even with his impairments. Under the Medical-Vocational guidelines, a younger individual (age 36), 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 contained in the file indicate that claimant has a history of 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 his substance abuse is material to his alleged impairment and alleged disability.

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that claimant was not eligible to receive Medical Assistance and/or State Disability Assistance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of light or sedentary work even with his impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.

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

Date Signed: 6/23/11

Date Mailed: 6/23/11

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/ds

■ [REDACTED]