

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: 2010-1887
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 24, 2009
Branch 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 November 24, 2009. 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 12, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On July 29, 2009, the Medical Review Team denied claimant's application stating that claimant's impairments were non-exertional.

(3) On August 4, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On August 13, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On October 20, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The claimant has a history of poor medical compliance at which point he decompensates and ends up in the hospital. Claimant functions well otherwise and has held gainful employment while maintaining treatment regimen. Denial of application to unskilled tasks, no exertional limits. Capable of past relevant work. Medicaid-P, retroactive Medicaid-P, and State Disability Assistance are denied by this decision. Listings 12.03, 12.04, 12.05, 12.08, 12.09, and 12.10 were considered in this decision. (p. 91)

(6) Claimant is a 25-year-old man whose birth date is [REDACTED]. Claimant is 5' 11" tall and weighs 280 pounds. Claimant recently gained 35 pounds. Claimant is a high school graduate and was in special education for all his classes and is able to read and write and does have basic math skills.

(7) Claimant last worked March 2009 in a factory from which he was terminated. Claimant worked at [REDACTED] from the time he was 16 through age 21 gathering shopping carts and stocking shelves.

(8) Claimant alleges as disabling impairments: Depression, autism, developmental disability, bipolar disorder, as well as substance abuse.

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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) 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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;

- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

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).

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).

At Step 1, claimant is not engaged in substantial gainful activity and has not worked since March 2009. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant last worked March 2009. Claimant's impairments do not meet duration as his condition has not been severe enough to keep him from working for 12 months or more.

Claimant testified on the record that he does have a driver's license and that he lives alone in an apartment and is single with no children under 18. Claimant does drive two times per week and usually drives two miles to Wal-Mart for food. Claimant buys TV dinners and microwaves them. Claimant grocery shops one time per week with no help and he is able clean his home by picking up, doing dishes, and he does play the guitar as a hobby. Claimant testified that he can stand for 12 hours, sit for 2 hours at a time, and walk one mile. Claimant testified that he can squat, bend at the waist, shower and dress himself, tie his shoes, but not touch his toes. Claimant testified that his knees are fine and his back are fine. Claimant testified that his level of pain on a scale from 1 to 10 without medication is an 8 and with medication is a 4. Claimant testified that he is right-handed and that his hands and arms are fine and that he has flat feet. Claimant testified that the heaviest weight he can carry is 50 pounds and he can lift 25 pounds repetitively.

Medical records in the file indicate that claimant was admitted to the psychiatric unit on a voluntary basis on [REDACTED] and was discharged [REDACTED]. His mental status on discharge indicated he was well-kept, cooperative, and maintained eye contact. His psychomotor activity was normal. No abnormal involuntary movements were noted. Speech had normal latency, rate and volume. Mood was described as good. Affect was euthymic and appropriate. Thought form was organized. Claimant denied any suicidal or homicidal thoughts. Claimant denied any delusions or hallucinations. Cognition was grossly intact. Insight was fair and judgment was good and his Axis I diagnosis was manic-depressive disorder, recurrent and

severe with psychotic features; anxiety disorder, NOS; rule out alcohol and cannabis abuse; pervasive developmental disorder, NOS; mild mental retardation; and a history of eye and foot surgeries. His GAF on discharge was 65-70. (pp. 39-40) This Administrative Law Judge finds that all of the information contained in the file is about claimant's [REDACTED] hospitalization in a psychiatric hospital.

A [REDACTED] psychiatric examination indicates that claimant was an overweight Caucasian male with extremely long black hair. He had lip piercings and a tattoo on his right arm. He was alert and fully oriented. He could do Serial 7's quite easily. He was able to retain and recall 2 out of 3 objects in 5 minutes. He had no thoughts of suicide. He denied any auditory or visual hallucinations or delusions. His judgment and insight were poor. His verbal IQ was 76. Performance IQ was 71. Full scale was 73 as recorded in his own records. He was assessed as having a mood disorder, borderline IQ, and discord with family members. His Axis V GAF was 35. (p. 52)

A [REDACTED] physical examination indicates the claimant was obese, in no clinical distress, and was very cooperative to interrogatory. His vital signs were stable. His HEENT was atraumatic, normocephalic, with no bulging palpable. Normal ear implantation, bilateral ear canals with wax impaction. No tenderness to touch. Nasal septal was symmetric with no discharge. Bilateral ear lobes were pierced. The mouth was symmetric. Moist oral mucosa. Pierced lower lip on left the left side. Eyes—pupils were isocoric and reactive to light. Extraocular muscles were limited to the left eye probably due to the history of apparently extraocular muscle problems. Clear sclerae. The neck was supple. No jugular venous distention or bruits and no goiter. The heart had regular rhythm with no murmur and no gallop. The lungs were clear to auscultation anteriorly and posteriorly. The abdomen— globus due to fat pads,

positive bowel sounds, depressive and no tenderness. The extremities had no edema and no cyanosis. There was evidence of a surgical scar on the right and left foot medial aspect at the arch level and also at the heel area at the Achilles tendon bilaterally. Right arm lateral aspect evidence of a tattoo. Neurological—no focal deficits or lateralization. Psychiatrically he was euthymic. The assessment was bipolar disorder and elevated blood pressure. (p. 50)

A [REDACTED] letter in the file indicates that claimant was hospitalized from [REDACTED] to [REDACTED] under the care of [REDACTED]. The claimant could return to work on December 10, 2007 without any restrictions. (p. 38)

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. In the instant case, there is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant has alleged a mental impairment in the form of depression, bipolar disorder, autism, and developmental disability. Claimant has alleged no physical limitations and no physical restrictions as well as no physical impairments.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers mental limitations resulting from his reportedly depressed state. Claimant was oriented to time, person, and place during the hearing. Claimant was able to answer all the questions at the hearing and was responsive to the questions at the hearing. 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 as a Wal-Mart cart gatherer and stocker or as a factory worker. There is insufficient objective medical/psychiatric evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work which he has engaged in, in the past. Therefore, if claimant had not already been denied at Step 2, he would again be denied at Step 4.

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

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

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

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *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).

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'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. 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 medium, light, or sedentary work.

Claimant did testify that he quit drinking alcohol approximately a year before the hearing and he stopped smoking marijuana about a year and a half before the hearing.

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 hearing 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 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 even if he were to be considered disabled, his substance abuse is material to her alleged impairment and alleged disability.

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's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence as it relates to claimant's ability to perform work. Claimant did testify that he does receive some relief from his pain medication. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity. Claimant is disqualified from receiving disability at Step 5 based upon the fact that he has not established by objective medical evidence that he cannot perform medium, light, or sedentary work even with his impairments. Under the Medical-Vocational guidelines, a younger individual (age 25), with 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. PEM, 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 medium, 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 Ismael Ahmed, Director
Department of Human Services

Date Signed: March 10, 2010

Date Mailed: March 11, 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/vmc

cc:

