

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: 2010-21000

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 6, 2010

Ingham 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 April 6, 2010. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED] Inc. The record was left open until May 19, 2010.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and retroactive Medical Assistance (retro MA-P)?

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 retroactive Medical Assistance benefits for the months of June, July, and August 2009, alleging disability.

(2) On November 9, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On November 17, 2010, the department caseworker sent claimant notice that his application was denied.

(4) On February 12, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On March 30, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: Claimant is capable of performing other work in the form of medium work per 20 CFR 416.968(c). Unskilled work, per 20 CFR 416.928(a) pursuant to Medical Vocational Rule 203.26.

(6) The hearing was held on April 6, 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 May 19, 2010.

(8) On May 24, 2010, 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), unskilled work per 20 CFR 416.928(a) pursuant to Medical Vocational Rule 203.26.

(9) Claimant is a 48-year-old man whose birth date is [REDACTED] Claimant is 5'10 tall and weighs 210 pounds. Claimant attended the 11th grade and does have a GED. Claimant is able to read and write and does have basic math skills.

(10) Claimant last worked December 31, 2007, as a head cook. Claimant also worked in construction for 20 plus years.

(11) Claimant alleges as disabling impairments: congestive heart failure, chest pain, gastroesophageal reflux disease (GERD), hypertension, chronic muscle spasm to the lower spine, depression, anxiety, a myocardial infarction in August 2008, and coronary artery disease with status post stenting, anxiety attacks, tremors, back spasms and slipped discs.

CONCLUSIONS OF LAW

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 December 2007. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a discharge summary dated June 11, 2009 indicates that claimant had atypical chest pain, musculoskeletal chest pain and a history of coronary artery disease. Claimant was in some distress and clutching his chest. His heart and lungs were clear. He underwent a rule out and mild protocol which was completely normal. The cardiology evaluation indicated that he was not a candidate for repeat stress test or catheterization because the chest pain was not of cardiac origin and based it on pain control and discharged him home. (Claimant Exhibit A, page 1.) A physician's clinical report dated November 5, 2009 indicates that claimant was anxious and in mild distress. His vital signs were reviewed and appeared to be correct. His eyes had no conjunctival findings or scleral icterus.

His ENT, he had dry ears, eyes and throat. He had dried mucus membranes present and the neck was supple. Cardiovascular, his pulses were normal, and in the respiratory area, he had no respiratory distress and his chest was nontender. His abdomen was soft. His back had normal external inspection. His skin had no rash. His neurological area was oriented x3 with no motor deficit. He was given EKG and he had a normal EKG with good tracing, normal sinus rhythm. Normal PR interval. Normal QRS complexes. Normal ST and P waves. No ectopy. The chest x-ray showed no acute disease. Normal lung markings present. Normal heart size. Mediastinum was normal. No infiltrate noted. Atelectasis base apparent. (Claimant Exhibit #4.) On October 26, 2009, consultation report indicates that claimant was in mild distress and he was well-developed and well-nourished. Blood pressure was 134/94, pulse was 78, respiratory rate 18 and afebrile. His HEENT: Atraumatic, normal cephalic. Normal mucous membrane. The neck was supple and symmetrical. The trachea was midline. No thyromegaly. The lymphatic: there is no adenopathy in the neck, axillae or supratlavicular fossa. The chest is clear to auscultation. No respiratory distress. Mild to moderate tenderness palpating the lower sternal area. The abdomen had mild epigastric tenderness. Bowel sounds were normal. Musculoskeletal area normal. Muscle bulk, tone and strength. No tenderness. In the neurological area, there was no focal deficit, alert and oriented. EKG shows normal sinus rhythm and no ischemic changes. Cardiac biomarkers are negative. Normal electrolytes and CBC. The claimant had an echo done on June 24, 2009 which showed normal ejection fraction with mild to moderate tricuspid regurgitation. Persantine cardiolyte on May 14, 2009 showed normal wall motion, small anterior infarct with no ischemia. His last cathe was August 2008 that showed patent stents and 50% stenosis in the mid ramus. (Claimant Exhibit #9.) On January 3, 2010, claimant was admitted to the hospital. On physical examination, his temperature was 98.1,

blood pressure 92/62, pulse 65, respiration 16. Skin was warm, dry and intact. No rashes, lesions or jaundice. The HEENT: had normal cephalic, atraumatic. The pupils were equal and react to light in accommodation. Extra ocular movements intact. Sclerae anicteric, conjunctivae pink. Oral mucosa was pink and moist. Uvula was midline. The neck was supple, nontender with no lymphadenopathy. The lungs were clear to auscultation bilaterally. The heart had regular rate and rhythm. The abdomen had positive bowel sounds and was soft nondistended, mild to moderate epigastric tenderness regarding no rebound or rigidity, no palpable masses or organomegaly. In the extremities, there was no peripheral edema. (Claimant Exhibit #11.) A [REDACTED] Service exam dated March 30, 2010 indicates that claimant appeared to have good contact with reality. His speed of motor activity was slow. He was pleasant. He reported being very dependent on others for some of his basic needs. He did not appear to be exaggerating or minimizing his symptoms. His stream of mental activity: Claimant was logical and organized. Claimant denied having hallucinations or delusions. He denied being persecuted. He denied others controlled his thoughts or that he had any unusual powers. He did report feeling worthless, hopeless and guilty. He reported somatic difficulties including: Pain, problems with sleep, difficulty with appetite, fatigue and weakness. He reported his level of depression on the day of the assessment as an 8 to a 9 on a zero to 10 scale. He reported his level of anxiety on the day of his assessment as a 9 and his level of anger was a 5. He did appear to be depressed and very anxious on the day of this assessment. His self ratings appear to be accurate. He was oriented to person, time and place. He remembers seven digits forward and four digits backward in recent memory. He remembered one of three objects after a three-minute delay. When asked to name recent Presidents of the United States in correct order, he gave Obama, Bush, and Clinton. When asked to name the past two Governors of Michigan, he gave Granholm

and “I can’t remember others, Levin, maybe it was actually Engler.” Claimant accurately gave his birthday as September 18, 1961. He is 48. When asked to name five large cities, he did so easily. When asked to name five well-known living Americans, he did so easily. In calculation, 4 plus 3 equals 7; 9 plus 6 equals 15; 4 times 5 equals 20; 9 divided by 3 equals 3; and 8 times 7 equals 56. Abstract thinking, when he was asked what the grass was greener on the other side of the fence meant, he stated some place is better than the other one and when he was asked what don’t cry over split milk that he indicated, “I don’t know.” In similarities and differences, how a bush and a tree are alike, they both have roots. How are a bush and tree different? Leaves are different on a tree. How an orange and banana are alike, they are both fruits and how an orange and banana are different, an orange is citrus. When asked what he would do if he were the first to see fire in a movie theater, he responded he would yell “fire!” When asked what he would do if he saw a stamped addressed sealed envelope on the sidewalk, he responded take it to the mailbox. He was diagnosed with major depression, panic disorder, alcohol dependence, cannabis dependence, both sustained and in full remission per his report. He had a GAF of 51 and best GAF for the past year was 51. His prognosis was poor and it would improve with appropriate mental health treatment and he would not be able to manage his own benefit funds. (Claimant Exhibit B1 through B4.) The Administrative Law Judge did consider the original eight pages of the medical reports as well as the new information which was submitted by claimant’s representative.

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. 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. 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: Panic attacks, depression and anxiety.

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 a no mental residual functional capacity assessment in the record, but there is a mental status examination which indicates that claimant is oriented x3 and in touch with reality though he is depressed. 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 her 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 his substance abuse is material to his alleged impairment and alleged disability.

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.

