

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 2010-42676
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 19, 2010
Kalamazoo 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 August 19, 2010. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED]

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (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 March 4, 2010, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits for the months of December 2009, January 2010, and February 2010.
- (2) On March 25, 2010, the Medical Review Team denied claimant's impairments were non-exertional.
- (3) On March 31, 2010, the department caseworker sent claimant notice that his application was denied.
- (4) On June 30, 2010, claimant filed a request for a hearing to contest the department's negative action.

- (5) On June 20, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The evidence supports that there are limitations associated with the claimant's conditions. The claimant would reasonably be limited to performing tasks of a light-exertional nature with seizure limitations. Further, the claimant would be reasonably be limited to performing simple and repetitive tasks with no public contact and only limited contact with peers and supervisors. 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 which avoids all use of ropes, ladders, and scaffolding, and exposure to unprotected heights and dangerous machinery. The claimant would also retain the ability to perform simple and repetitive tasks while not being exposed to the general public and only limited contact with peers and supervisors. Therefore, based on the claimant's vocational profile of 51 years old, at least a high school education, a history of no gainful employment, Medicaid-P is denied using Vocational Rule 202.13 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA was not applied for by the claimant. Listings 1.02, 1.03, 1.04, 3.01, 4.04, 5.05, 8.04, 11.02, 11.03, 11.14 as well as 12.04, 12.16, 12.08, 12.09 were considered in this determination.
- (6) The hearing was held on August 19, 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 August 20, 2010.
- (8) On August 24, 2010, the State Hearing Review Team again denied claimant's application stating that claimant had back and knee pain. His strength was intact and there was no evidence of a significant neurological abnormality. He is able to walk without assistance. He seizures are fairly well controlled with treatment. He does have some anxiety and depression, but no evidence of a formal thought disorder. 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 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 closely approaching advanced age at 51, high school education, and a history of unskilled or semi-skilled work, MA-P is denied using Vocational Rule 202.13 as a guide. Retroactive MA-P was considered in this case and is also denied.
- (9) Claimant is a 51-year-old man whose birth date is [REDACTED] Claimant is 5'9" tall and weighs 177 pounds. Claimant recently lost 20

pounds. Claimant is a high school graduate, has one year of [REDACTED] vocational printing. Claimant is able to read and write and does have basic math skills.

- (10) Claimant last worked in 2005 as a pest control inspector. Claimant went to prison from [REDACTED]. Claimant has also worked doing some painting, landscaping, and mostly pest control.
- (11) Claimant alleges as disabling impairments: stomach pain, shortness of breath, hepatitis C, seizures, memory loss, depression, bi-polar disorder, ADHD, an inflamed penis, arthritis, cellulitis, bad knees, degenerative disc disease, arthritis in his hands as well as a panic disorder and a sleep disorder.

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

The objective medical evidence on the record indicates that claimant is single with no children under 18 and lives with his mother in an apartment. Claimant's mother supports him. Claimant has no income and he receives the Adult Medical Program and Food Assistance Program benefits. Claimant testified that his mom takes him where he needs to go and his mother cooks for him and he only microwaves things. Claimant testified that his mother grocery shops for him but he goes one time per month. Claimant testified that he lives in a basement and usually folds his blanket and does the laundry. Claimant testified that he watches TV 1-2 times per day. He gets nervous, sweats, and withdraws from people and he gets very anxious when he has to go out in public. Claimant testified that he can stand for 30 minutes, sit for 30 minutes to an hour and walk 2 blocks. Claimant testified that he cannot squat but he can bend at the waist even though it hurts. Claimant testified that he can shower and dress himself, tie his shoes, but not touch his toes. His level of pain on a scale from 1-10 without medication is an 8-9 and with medication is a 6-7. Claimant testified that he has 2 or 3 good days out of a week and he is right handed and he has arthritis in his hands and arms and his legs and feet are fine. Claimant testified that he can carry 10-15 pounds, but his back pops out and he does smoke a pack a cigarettes every 2 days and his doctor has told him to quit and he is not in a smoking cessation program, but he does want the patch. Claimant testified that he used to drink a pint or two a week and he stopped using cocaine about one year ago. Claimant testified that in a typical he lies in the bed and tries to sleep in the dark, then showers, has a cigarette, goes downstairs and reads and tries to watch TV. Claimant testified that sometimes he doesn't eat and looses with when he gets mad.

A mental status evaluation conducted April 1, 2020, indicates that claimant was oriented to time, place and person. He repeated 5 numbers forward and 3 numbers backward for immediate memory. He recalled 2-3 objects noted earlier in the session. He named Obama, Bush, Bush as 3 past presidents. He had no difficulty in remembering his birthdate. He named New York, Los Angeles, Chicago, Boston, Dallas as large cities. He noted John Wayne, Robert Redford, Meryl Streep, and Michael Jordan as current famous people. He stated that the health care issues and the war as current events (p. 110). He subtracted 7's in the following order: 100, 93, 86, 79, 71, 64. He had no problem with simple addition or multiplication. In abstract thinking when he was asked about the grass is greener statement, he stated "not happy with their life, better somewhere else." When asked about the spilled milk, he questions "can't change the

past.” He noted a tree and a bush were similar because they had foliage. They differed because one is a bush and one is a tree. An orange and a banana were noted to be similar because they were both fruit, and they differed in color and shape. In Judgment: he would mail an envelope if he found one and he would alert others if he discovered a fire in a theatre. He appeared to struggle with mood swings. He seemed quite guarded and afraid of [REDACTED]. He appeared sincere in his overall presentation. His current GAF was 53, and he was diagnosed with bi-polar disorder, most recent episode mixed, and a panic disorder, and a personality disorder. His prognosis would be poor and he would probably benefit from continued therapy and treatment through [REDACTED]. He seems to have issues with being around people and acting out. He would have a difficult time in a work setting due to his mood swings and unpredictability. Until these issues are fully addressed, I feel that he would have a difficult time in a public setting and he would not be able to manage his own funds (pp. 110-111).

A March 13, 2010, physical examination indicates that claimant’s blood pressure on his right arm was 140/90 and left arm was 140/100. Pulse was 88 and regular. Respiration was 18, weight was 192 pounds, and height was 69” with no shoes. The claimant was cooperative throughout the exam. His hearing appeared normal and speech is clear. Gait is normal. The claimant does not use an assistive device for ambulation. Skin: there is a scar over the left knee from a prior stab wound that is well-healed. There is no cyanosis or clubbing. In the eyes, the visual acuity in the right eye is 20/20 and in the left eye is 20/20 without glasses. The sclera are not icteric, nor is there any conjunctival pallor. Pupils are equal and reactive to light in accommodation. The fundus appears normal. 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 adventitious sounds. The heart was normal S1 and S2 heard. No murmurs or gallops are appreciated. The heart does not appear to be enlarged clinically. The PMI is not displaced. The abdomen is flat and non-tender without distention. There are no masses felt nor is enlargement of the spleen or liver. The claimant was able to get on and off the examination table without difficulty, perform heel and toe walking without difficulty and has a mild or minor difficulty with squatting. Straight leg raise testing is negative bilaterally. He has no paravertebral muscle spasm. He does have a moderate sized joint effusion involving the right knee. There are no obvious bony deformities. Peripheral pulses are easily palpated and symmetrical. There is no edema. There is no evidence of varicose veins. Range of motion of all joints checked as full. There is no erythema of any joint. Grip strength is normal. The hands have full dexterity. Range of motion of dorsolumbar spine and knees is normal except the right knee flexion is one time. Motor function remains intact. Sensation is decreased over the anterior aspect of the distal left lower extremity which he states occurred following a stab wound. All other sensation is intact. Reflexes are present and symmetrical. No disorientation is noted. His history of seizures is a new diagnosis since Spring 2009, his seizures appear to be relatively controlled with Neurontin. He has not had a seizure since last September. Neurologic testing was normal. His strength and sensation are both intact to the lower extremities. He has a mild decrease in flexion with the right knee. He does have symptoms that could be consistent with a possible meniscal injury (pp. 105-107).

This Administrative Law Judge did consider all of the approximately 112 pages of medical reports contained in the file in making a decision.

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: depression, bi-polar disorder, panic attacks and ADHD. New information in the file indicates that claimant has a diagnosis that is complex Aphthosis. (New information p. A2).

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 a gain 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.

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.

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

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

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.

Landis

/s/

Y. Lain

Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: August 30, 2010

Date Mailed: August 31, 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.

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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/alc

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