

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: 2010-44602

Issue No: 2009; 4031

[REDACTED]

[REDACTED]

Hearing Date:

September 15, 2010

Kent 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 September 15, 2010. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) 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 9, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On December 28, 2009, the Medical Review Team denied claimant's application.
- (3) On April 9, 2010, the department case worker sent claimant notice that his application was denied.
- (4) On May 1, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (5) On August 3, 2010, the State Hearing Review Team again denied claimant's application stating in its' analysis and recommendation: the evidence supports that there are no psychiatric limitations. The claimant would reasonably be limited to performing tasks of the light exertional

nature with some consideration related to heights and machinery. The claimant retains the physical residual functional capacity to perform light exertional work. There are no psychiatric limitations. Additionally, the claimant should avoid concentrated exposure to dangerous machinery and unprotected heights. The claimant should use ropes, ladders and scaffolds no more than occasionally. The claimant's past work was light exertional, simple and repetitive in nature. Therefore, claimant retains the capacity to perform past relevant work. Medicaid-P and retroactive Medicaid-P were not applied for by claimant. State Disability was denied per PEM 261 due to the capacity to perform past relevant work. Listing 1.01, 12.04, and 12.06 were considered in this determination.

- (6) Claimant is a 37-year-old man whose birth date is [REDACTED]. Claimant is 4'6" tall and weighs 108 pounds. Claimant is a high school graduate and has 2 years of college. Claimant is able to read and write and does have basic math skills.
- (7) Claimant is currently employed from April 2010 forward manufacturing bakery equipment. He was earning [REDACTED] per hour and working 40- 45 hours per week. Claimant had worked in [REDACTED] manufacturing most of his life. Claimant testified that he was receiving [REDACTED] per month in net earned income.
- (8) Claimant alleges as disabling impairments: dwarfism, depression, anxiety, swollen ventricles in the brain, vertigo, dizziness and light headedness and heart racing.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

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

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

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

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

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

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

...Medical reports should include –

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

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

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

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

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

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

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

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

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

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

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

At Step 1, claimant is engaged in substantial gainful activity and has been working since April 2010. Claimant is disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates a disability determination services June 8, 2010, medical examination report reveals that claimant was well-developed, well-nourished male in obvious distress except for his hydrocephalus and stature. He was alert, cooperative in answering questions and following requests and well-oriented. Affect, dress and effort are well appropriate. The claimant's immediate, recent and remote memory was intact with normal concentration. The claimant's insight and judgment were both appropriate. The claimant's blood pressure on the left arm was 120/90. Respiratory rate equals 18. Weight is 109 pounds. Height is 52" without shoes. His skin was normal except for bilateral knee and ankle scarring. He had a visual acuity in the right eye of 20/30, left eye of 20/40 without corrective lenses. Pupils were equal, round and reactive to light. The claimant could hear conversational speech without limitations or aides. The neck was supple without apparent masses. The chest, breath sounds were clear to auscultation and symmetrical. There was no accessory

muscle use. The heart had a regular rate and rhythm without enlargement. There was a normal S1 and S2. In the abdomen there was no apparent organomegaly or masses. In the vascular system, there was no clubbing, cyanosis, or edema detected. Peripheral pulses were intact. In the musculoskeletal area there was no evidence of joint laxity, crepitation, or effusion. Grip strength remains intact. Dexterity was unimpaired. The claimant could pick up a coin, button clothing and open a door. The claimant had moderate difficulty getting on and off the examination table due to stature, moderate difficulty heel and toe walking, no difficulty squatting and arising. He had difficulty hopping because of limited ankle range of motion. Range of motion was impaired in the cervical and dorsolumbar spine, both shoulders, both elbows, both hips, both knees and both ankles, but was normal in both wrists as shown in the file and range of motion tables (p. 93). In the neurologic area, cranial nerves were intact. Motor strength was 5/5 and tone was normal. Sensory appeared intact to light touch. Reflexes were 2+ and symmetrical. Plantar responses were flexor. There was no nystagmus appreciated. Romberg testing was negative. He was able to tandem walk. The claimant walked with a normal gait without the use of an assistive device. Straight leg raising was accomplished to 90 degrees on the right and 90 degrees on the left. The conclusion was that claimant had complications of achondroplastic dwarfism. He had significant limitation and range of motion when attempting to perform certain maneuvers and part because of the osteotomies. He would lose his balance. He was unable to tandem walk although his Romberg testing was negative. He had developed hypertension, subjective vertigo, has problems with short term memory and has had multiple episodes of loss of consciousness. The doctor was unable to ascertain the cause after loss of consciousness (p. 95).

A May 20, 2010, psychiatric medical examination report indicates that claimant drove himself to the appointment and was seen alone for his interview. He was 52" tall and weighed 102 pounds. His posture was normal. He tended to sit on the edge of the couch. His gait was normal. His clothes were clean. He wore a short sleeve shirt, blue jeans and work boots. He had a go-tee and wore a cap. His hygiene was good. His mannerisms were cooperative and attentive. He appeared to be in pain at times. He seemed somewhat edgy or angry. He demonstrated good reality contact. He was asked about self esteem to which the claimant replied uncontrollable, can't keep it maintained. He is mostly autonomous in his everyday life. This claimant was asked about motivations for the future. He states he doubted that he would work long term. He wants to know that he would be taken care of after he gets older as his physical abilities fail even more. The claimant's speech was spontaneous, organized and circumstantial. There is no evidence of hallucinations, delusions, or obsessive thought. He denied any history of suicidal thinking or suicidal behavior. He appeared somewhat edgy and angry in the appointment. He also acknowledges worry like what will he do if he loses his house. He states discomfiling. When asked about his moods, he also described himself as groggy. He was oriented in all spheres. He can repeat 5 digits forward and 3 backward. He recalls one of three objects stated to him when asked to remember these three minutes later. This claimant knows the current president is Barack and recent presidents include Bush, both Bush's and he cannot think of anybody else. He stated his birthday accurately. The claimant was asked to name 5 large cities,

and he said, Kalamazoo, Grand Rapids, Detroit, Lansing and Saginaw. Current famous people include Martha Stewart, Paris Hilton and Bill Cosby. He was asked to identify some events in the news to which the claimant replied the oil leak, state budget, and jobless rate. He was able to perform serial 3's forward accurately. In doing serial 7's he said 7, 14, 22, 28, 36. This claimant cannot perform serial 7's backward. He stated $5*5=25$, $8*7=54$, $9+8=19$, and $12-7=7$. The claimant was asked to interpret two proverbs, the grass is always greener on the other side of the fence, means come to that side of the fence, and the saying don't cry over spilled milk, means I don't know that's so real I guess. A bush and a tree are alike because they are in the ground and they are different because one is small and one big. In judgment, if you found a stamped addressed envelope, he would throw it in the trash. If he discovered a fire in a theatre he would scream. His diagnosis is learning disorder NOS by self report, but no diagnosis on axis 2. His GAF was 54 and his prognosis was guarded. He does not show severe psychological symptoms but he does seem to be a greater risk for depression and anxiety especially as his physical condition worsens. He was able to understand, retain, and follow instructions of probably moderate complexity. He may even be capable of engaging in abstract and can't do any work that is more than routine, including making independent work related decisions. However, the claimant's dwarfism appears to affect his everyday functioning and his capability in the job setting. Because of these limitations, he may not handle job frustrations well and may be inclined to have some run-ins with co-workers and supervisors. He would not be able to manage his own benefit funds and his mother would be the better one to do this even by the claimant's own acknowledgement (pp. 99-101). This Administrative Law Judge did consider all of the medical reports contained in the file in making this decision.

A medical examination report dated December 7, 2009, indicates that claimant was 54" tall and weighed 112 pounds. He was normal in areas of examination except for dwarfism. A brain CT showed prominent ventricles and at the cause of the dizziness. The clinical impression is that claimant's condition was stable. He might require a stool to work at certain heights. Working on a stool or a ladder is not recommended due to unpredictability of dizzy spells (pp. 3-4).

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. 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, 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 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 37), 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. 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.

Landis

/s/

Y. Lain

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

Date Signed: 10/19/2010

Date Mailed: 10/19/2010

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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