

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

IN THE MATTER OF:



Reg. No: 2010-51975
Issue No: 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 13, 2010
Genesee County DHS (2)

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 October 13, 2010. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for 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 April 26, 2010, claimant filed an application for State Disability Assistance benefits alleging disability.
- (2) On June 30, 2010, the Medical Review Team denied claimant's application stating that claimant's impairments were non-exertional.
- (3) On July 9, 2010, the department caseworker sent claimant notice that his application was denied.
- (4) On August 11, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (5) On September 14, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and decision: a review of the medical record shows that the alleged impairments do not meet or equal a Social Security listing. The objective medical evidence in the file

demonstrates the residual functional capacity to perform unskilled work. The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days.

- (6) Claimant is a 37-year-old man whose birth date is [REDACTED]. Claimant is 6'2" tall and weighs 150 pounds. Claimant attended college for nearly 4 years and has an [REDACTED]. Claimant is able to read and write and does have basic math skills.
- (10) Claimant last worked in 2007 for [REDACTED] as a mover. Claimant has worked as a housekeeper at [REDACTED] as a cashier and as a grounds worker. Claimant received unemployment compensation benefits until February 2010.
- (11) Claimant alleges as disabling impairments: depression, anxiety, suicidal thoughts, lack of concentration, and lack of motivation. Claimant alleges no physical impairments.

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).

A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in BEM Item 261.

At Step 1, claimant is not engaged in substantial gainful activity and has not worked since 2007. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates claimant testified on the record that he is homeless and uses his mother's address as his mailing address. Claimant is divorced with no children under 18 and he does not have any income but does receive Food Assistance Program benefits. Claimant testified that he does not have a driver's license because he had to pay driver's responsibility fees and he does walk or take the bus to appointments. Claimant testified that he does cook everyday and cooks things like hot dogs, hamburgers, and chicken and he does grocery shop one time per month

and he needs help getting the things that he needs. Claimant testified that he does clean by straightening up, sweeping, doing laundry and dishes sometimes and he watches TV about 2 hours per day. Claimant testified that he has no limits on his ability to stand or walk and he can sit for about 30 minutes because he is anxious. Claimant testified that he can squat, bend at the waist, shower and dress himself when he has motivation, tie his shoes, and touch his toes. Claimant testified that he does have some back pain but his knees are fine. Claimant testified that his level of pain on a scale from 1-10 without medication is a 6 and that he doesn't have any pain medication. Claimant testified that he is right handed and his hands and arms are fine and his legs and feet are fine. Claimant testified that the heaviest weight that he can carry is 25 pounds and he does not smoke cigarettes and he drinks a quart of beer per week and he does smoke marijuana one time per week. Claimant testified that in a typical day, he sits around depressed thinking about his situation and goes to his appointments. Claimant testified that he has attempted suicide by swallowing pills a couple times in the last year.

A psychiatric evaluation dated May 7, 2010, by [REDACTED] indicates that claimant was casually dressed and seemed to emit a body odor. He did not require assistance in scheduling and keeping appointments. With directions he was able to find locations independently. He was in contact with reality throughout the examination. His gait and posture appear to be normal. His psychomotor activity level appeared to be normal. He did not seem to exaggerate or minimize symptoms. His self-esteem was described as low. His speech was unimpaired and a stream of mental activity was spontaneous and organized. He reported having suicidal ideation in the past and reported suicidal behavior 3-4 times. He denied current suicidal or homicidal intent. He stated that he has a piercing in his ear that just stays there and sometimes he hears his name being called and turns around and there is no one there. His affect was restricted. He reported genuinely feeling drained. His emotional state appeared to be depressed during the exam. He did not laugh or smile during the exam. He was oriented to time, place, and person and stated that it was Friday and he was in Flint. Claimant couldn't remember at least 5 numbers forward and 2 numbers backward for immediate memory and in his recent memory he was able to recall 2-3 objects 3 minutes later. As past recent presidents, he named Bill Clinton and he stated his birth date as [REDACTED]. He named the current president as Barack Obama and named 3 large cities as Indianapolis, New York, and Chicago and two famous living people as Evander Holyfield and Mike Tyson. The current events were the oil spill. In his calculations, he said that $3+4=7$, $8-3=5$, $2*4=8$, and $10/2=$ he said he didn't know. He subtracted serial 7's, 100, 93, 84, 72 and subtracted 3's from 30, 27, 18, 15, and 12. In his abstract thinking he stated that the grass always looks greener on the other side of the fence means that someone admires something that somebody else has. He also stated to not count your chickens before they hatch, means don't count of the future before it gets here. When describing similarities and differences, he stated that a bush and a tree are alike, and that they both have green leaves, they are different because one is smaller. If he saw that there was a fire in a theatre he would yell fire and if he found a stamped addressed envelope he would put it in the mailbox and he didn't have any future plans, just to take his medications and try to get better. He had the mental

ability to understand, attend to, remember and carry out instructions and was mildly impaired in those areas. His abilities to respond appropriately to co-workers and supervision and to adapt to change and stress in the workplace were moderately impaired. His psychological condition would moderately impair his ability to perform work activities. He was diagnosed with schizoaffective disorder and poly substance dependence. His current GAF was 50 and his prognosis was guarded and he was able to cognitively manage his funds but he had substance abuse so he would not be able to manage his own funds (pp. 9-10).

A mental residual functional capacity assessment in the record indicates that claimant was moderately to markedly limited in several areas (pp. 22-23).

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, suicidal thoughts, anxiety, and lack of concentration.

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 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. In the instant case, claimant should be able to perform any level of exertional work, as he does not have any physical limitations.

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 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'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 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 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: November 9, 2010

Date Mailed: November 9, 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.

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