

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: 2010-52317
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date: November 30, 2010
Genesee County DHS (02)

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 November 30, 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) 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 April 24, 2010, claimant filed an application for Medical Assistance, State Disability Assistance, and Retroactive Medical Assistance benefits alleging disability.
- (2) On July 30, 2010, the Medical Review Team denied claimant's application stating that claimant's impairments were non-exertional.
- (3) On August 4, 2010, the department caseworker sent claimant notice that his application was denied.
- (4) On August 25, 2010, claimant filed a request for a hearing to contest the department's negative action.

- (5) On September 22, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and decision: an assessment of the Medical evidence submitted for review reveals the claimant retains the capacity to perform unskilled work. The medical evidence of record indicates that the claimant retained to capacity to perform at least unskilled work. The claimant's impairments do not meet/equal in nature or severity of a Social Security listing. MA-P is denied using the provisions of 20 CFR 416.968(a) unskilled work as a guide. Retroactive MA-P was considered and is denied. SDA denied per PEM 261.
- (6) Claimant is a 48-year-old man whose birth date is [REDACTED]. Claimant is 5' 6" tall and weighs 161 pounds. Claimant does have a GED. Claimant is able to read some and is able to add and subtract.
- (7) Claimant testified that he was in prison from [REDACTED] and he was 19-years old when he went to prison so he had not worked. Claimant did do some porter/janitorial work when he was in prison.
- (8) Claimant alleges as disabling impairments: mental impairment, diabetes mellitus, hypertension, two hernias in the stomach, chronic obstructive pulmonary disease, irritable bowel syndrome, gastroesophageal reflux disease, fatigue, lack of focus, depression, lack of sleep and post-traumatic stress disorder, and a history of self-mutilation in prison. Claimant also has a history of auditory hallucinations and it tells him to kill himself.
- (9) This Administrative Law Judge notes for the record that claimant and the Administrative Law Judge did have very minimal contact when the Administrative Law Judge worked for the prison system but does not have any personal bias toward claimant and has had no contact since approximately 1991.

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 not engaged in substantial gainful activity and has never worked a job. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant testified that he lives with others in a ¾ house and he's on parole and he is single with no children under 18 and doesn't have any income. Claimant does receive the Food Assistance Program benefits and the Adult Medical Program. Claimant does not have a drivers license and he usually goes to a meeting everyday and to see his therapist and Mothers Against Drunk Driving, his sister takes him or he takes the bus. Claimant testified he only microwaves food and that he needs help to pick out things when he goes grocery shopping because it take two hours to grocery shop and he only has two hours of free time so he usually asks someone else to grocery shop for him. Claimant testified he

sweeps the floor, he reads the newspaper and magazines and usually watch his television 3-4 hours a day. Claimant testified that he can stand for 10-20 minutes, sit for an hour, and walk 2 blocks. Claimant testified he can squat a little but not bend at the waist. Claimant testified that his back hurts and his knees hurt and he is able to shower and dress himself and can tie his shoes while sitting and can touch his toes. Claimant testified that his level of pain on a scale from 1-10 without medication is an 8, and with medication was a 4. Claimant testified that he is left handed and his hands and arms hurt and his legs and feet are fatigued and hurt. Claimant testified the heaviest weight he can carry is a gallon of milk or a 12-pack of pop and he does smoke a pack of cigarettes per day and doctors told him to quit, and he not in a smoking cessation program. Claimant testified he stopped using drugs when he went to prison and that he used to drink spud juice in prison but has not had that in a long time. Claimant testified he typically sits and is usually bored watching television and reading, and then he goes on his appointments. Claimant testified that he also has gum disease.

A psychological testing done on July 6, 2010, indicates that he was driven to the appointment by his sister and arrived punctually. Claimant provided a State of Michigan identification card and he reported being 5' 6" tall and weighed 165 pounds and he was casually dressed. His hygiene and grooming appeared to be appropriate. His gait and posture appeared to be normal. His psychomotor activity level appeared to be normal. His speech was unimpaired. He spoke with what seemed to be a southern accent, but was raised in Michigan. His alleged impairments were reported as follows: Chronic obstructive pulmonary disease, high blood pressure, acid reflux, diabetes, and mild mental retardation. He was reminded to put forth his best effort. The WAIS-IV Scores obtained today were lower due to claimant's inconsistent effort throughout the examination. It was the tester's impression that claimant deliberately provided incorrect responses. His estimated cognitive abilities were at least borderline range. (Pages 1-3)

Psychological Evaluation of July 6, 2010, indicates that the claimant seems to be in contact with reality throughout the examination. Gait and posture appeared to be normal his psychomotor activity level appeared to be normal. He described problems walking because of getting tired real quick and his legs were hurting. Claimant did not seem to significantly exaggerate symptoms. Claimant's self-esteem was described as not to good. His speech was unimpaired. His stream of mental activity was spontaneous and organized. There was no significant evidence of delusions, persecutions, obsessions, thoughts controlled by others, or unusual powers. Claimant states that he hears voices from inside his head telling him to kill himself. He sometimes hears his deceased mother's voice and usually hears the voices when he goes to sleep. He denied current suicidal or homicidal intent. His affect was appropriate to mood, he generally reported feeling not to happy. One minute he seems happy and the next minute he feels tired and he didn't care about life and living and stuff like that. He didn't feel like being around people. His immediate memory, he could remember 4 numbers forward and 3 numbers backwards. He seemed capable of better performance on digits. He was diagnosed with depressive disorder, history of polysubstance abuse, antisocial personality disorder, and a current GAF: 50 his prognosis was guarded and

he would be cognitively able, to manage funds but has a history of substance abuse. (Page 9-11).

Mental Residual Function Capacity Assessment in the record indicates that claimant was not significantly limited in most areas and only moderately limited in several areas (Pages 11a & 11b). The functional assessment indicates that claimant is capable of simple routine 1-2 step unskilled tasks, not involving public interactions, on a sustained basis. (Page 11C)

A medical examination report dated December 4, 2009, indicates the claimant 5' 6" tall weighing 165 pounds, his blood pressure was 130/80, he was normal in all areas except that he had chronic obstructive pulmonary disease, tobacco abuse, hypertension, gastroesophageal reflux disease. Clinical Impressions that claimant was stable and he had no physical limitations he could occasionally lift 25lbs or less and never lift 50lbs or more. He could stand or walk about 6 hours in an 8 hour day, he could use both of his upper extremities for repetitive actions such as simple grasping, reaching, pushing and pulling, fine manipulating and operating both foot and leg controls and he had no physical limitations. (Page 52 & 53).

A 2nd Medical Examination Report in the file indicates the claimant was normal in all areas of examination and he was stable and it was dated May 27, 2010 (Pages 32-34).

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, lack of focus, post-traumatic stress disorder, lack of sleep and fatigue.

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 (48), with a high school education and an unskilled work history who is limited to light work is not considered disabled.

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 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 Maura D. Corrigan, Director
Department of Human Services

Date Signed: February 2, 2011

Date Mailed: February 2, 2011

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/ds

cc:

