

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

IN THE MATTER OF:



Reg. No: 2010-54695
Issue No: 2009; 4031
Case No: [REDACTED]
Hearing Date:
November 10, 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 November 10, 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 May 26, 2010, claimant filed an application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On July 23, 2010, the Medical Review Team denied claimant's application stating that claimant could perform prior work.
- (3) On August 3, 2010, the department caseworker sent claimant notice that his application was denied.
- (4) On September 9, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (5) On October 5, 2010, the State Hearing Review Team again denied claimant's application stating that in its' analysis and decision: A review of the medical evidence of record shows that the alleged impairment's 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. This may be consistent with past relevant work. However, there is no detailed description of past work to determine this. In lieu of denying benefits as capable of performing past work, a denial to other work based on a vocational rule will be used. The claimant's impairments do not meet/equal the intent 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 is denied per PEM 261.

- (6) The hearing was held on November 10, 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 December 7, 2010.
- (8) On December 29, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the objective medical evidence in concert with claimant's statements indicates that claimant is capable of gainful employment but for drug and alcohol abuse. Public Law 104.121 and 20 CFR 416.935 are cited due to the materiality of drug and alcohol abuse. The medical evidence of record does not document the mental /physical impairment that significantly limits the claimant's ability to perform basic work activities. Therefore, MA-P is denied per 20 CFR 416.921(a). Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 due to the lack of severity. Listings 1.02, 1.03, 1.04, 11.14, 12.02, 12.04, and 12.09 were considered in this determination.
- (9) Claimant is a 43-year-old man whose birth date is [REDACTED]. Claimant is 5'8" tall and weighs 180 pounds. Claimant is a high school graduate and attended college for 1 semester. Claimant is able to read and write and does have basic math skills.
- (10) Claimant last worked September 2010 as a temporary worker working 8 hours a week earning \$ [REDACTED] an hour as a parking attendant. Claimant has also worked at a [REDACTED] and for many temporary agencies.
- (11) Claimant alleges as disabling impairments: bi-polar disorder, depression, fatigue, headaches, back pain, anxiety and stress, and possible traumatic brain injury.

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 a substantial gainful activity but is working. Claimant does work 8 hours per week and earns \$ [REDACTED] per hour. Claimant is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence on the record indicates that claimant testified on the record that he is single and lives in an apartment and his rent is paid by section 8. Claimant testified that he has no children under 18 and he receives \$ [REDACTED] per month in gross income through State Disability Assistance and temporary jobs. Claimant testified that he receives Food Assistance Program benefits and State Disability Assistance benefits and he has a DUI and therefore has no driver's license. Claimant testified that he rides his bike or takes the bus to get where he needs to go and he usually takes the bus 1 time per day and rides for 30 minutes. Claimant testified that he eats at the shelter kitchen and he does grocery shop 1 time per week with no help. Claimant testified that he does clean his home and he does laundry and puts dishes in the dishwasher. Claimant testified that he doesn't watch TV and has no hobbies. Claimant stated that he can stand for 4 hours, sit for 6-8 hours and can walk one mile and squat, bend at the waist, shower and dress himself, tie his shoes and touch his toes. Claimant stated that his knees are fine and his back has pain. Claimant testified that his level of pain on a scale for m 1-10 without medication is a 10 and with medication is a 6. Claimant testified that he is right handed and his hands and arms are fine and his legs and feet are ok. Claimant testified that the heaviest weight that he can carry is 25 pounds and he does smoke half a pack of cigarettes per day and his doctor has told him to quit and he is not in a smoking cessation program. Claimant testified that he doesn't drink alcohol and that he stopped taking marijuana and cocaine in 2008 after he went to rehabilitation. Claimant testified that on a typical day he stretches for 1 hour and does light exercises, drinks coffee and goes over his bills and the mail. Watches TV, calls for work, visits a friend, does the fellowship lunch and then stretches for an hour and goes to bed. Claimant testified that he can work part-time but he can't find full-time work.

This Administrative Law Judge did consider approximately all 200 pages of medical reports contained in the file.

A psychological report dated [REDACTED] indicates that claimant was oriented to person, place and time. He was able to recall 5 digits forward and 5 digits backward in immediate memory. In recent memory he recalled 0 of 3 objects following delay and with prompting he did recall 2 objects and with multiple choice he could not identify the 3rd object. He past memory he gave his birth date [REDACTED]. He identified recent presidents as Obama, Clinton, Bush and Regan. He named 5 large cities as Los Angeles, Chicago, Detroit, Lansing and Denver and famous people as Arnold Schwarzenegger and Angelina Jolie. Current events were the Haiti thing. He was prompt when he said an earthquake, I don't know. Calculations were $5+4=9$, $10-6=4$, $5*7=35$, $12/3=4$. His serial 7's were 93, 86, 79, 72, 65. When asked the meaning of the grass is greener on the other side of the fence, he replied "I don't know." When asked the meaning of don't judge a book by its cover, he replied, "everybody judges you on your facade or your personality before they get to know you." When asked to compare

an orange and a banana he indicated that they are similar because they are fruit and they are different because one is round and one is oblong. A bush and a tree are similar because they have petals and leaves and they are different because one grows taller than the other. When asked what he would do if he found a stamped addressed envelope on the ground, he replied, "Put it in the mailbox." When asked what he would do if he were the first to discover a fire in a theatre, he replied, "Yell fire and pull the alarm." He was diagnosed with alcohol dependence, cocaine dependence, cannabis abuse, somatoform disorder and major depression. The prognosis is fair. Claimant did not seem to know exactly what was going on with him medically and claimed that no one else did either. Other than having a low white blood count, it's not clear that he has ever had any testable illness or concerns. However, he reports to having a lot of symptoms and leaving feeling poorly. His current GAF score was 55 and he would be able to manage his own benefit funds.

A mental residual functional capacity assessment in the record indicates that the claimant was moderately limited in the ability to maintain attention and concentration for extended periods. He was markedly limited in the ability to interact appropriately with the general public, the ability to accept instructions and respond appropriately to criticism from supervisors, and the ability to get along with co-workers or peers without distracting them or exhibiting behavioral extremes. He is only moderately limited in the ability to respond appropriately to change in the work setting, the ability to maintain socially appropriate behavior and to adhere to basic standards in neatness and cleanliness, and the ability to ask simple questions or request assistance, the ability to work in coordination with or approximately to others without being distracted by them and the ability to complete a normal workday and worksheet without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number or length of rest periods. He had no evidence of limitation in any other category. The mental residual functional capacity assessment was filled out [REDACTED] (pp. 179-180). His axis GAF was 40 at that time (p. 177).

A medical examination report dated [REDACTED] indicates that claimant was 5'8" tall and weighed 157 pounds. His blood pressure was 100/66, he was diagnosed with depression, fibromyalgia and fatigue. He was normal in all areas of examination except he had flat affect and depressed mood. The clinical impression is that claimant was stable and he had no physical limitations. He could never lift 50 pounds or more, occasionally lift 25 pounds or less. He did not require assistive devices for ambulation. He could stand or walk at least 2 hours in an 8 hour day and sit about 6 hours in an 8 hour day. He could use both of his upper extremities for simple grasping, reaching, pushing and pulling and fine manipulating and he could operate foot and leg controls with both feet and legs. Claimant had some mental limitations in that he had a history of alcohol abuse, depression, and fibromyalgia (pp. 151-153).

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, anxiety, stress, and bi-polar disorder.

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

The Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) is material to a person's disability and when benefits will or will not be approved. The regulations require the disability analysis be completed prior to a determination of whether a person's drug and alcohol use is material. It is only when a person meets the disability criterion, as set forth in the regulations, that the issue of materiality becomes relevant. In such cases, the regulations require a sixth step to determine the materiality of DAA to a person's disability.

When the record contains evidence of DAA, a determination must be made whether or not the person would continue to be disabled if the individual stopped using drugs or alcohol. The trier of fact must determine what, if any, of the physical or mental limitations would remain if the person were to stop the use of the drugs or alcohol and whether any of these remaining limitations would be disabling.

Claimant's testimony and the information indicate that claimant has a history of tobacco, drug, and alcohol abuse. Applicable hearing is the Drug Abuse and Alcohol (DA&A) Legislation, Public Law 104-121, Section 105(b)(1), 110 STAT. 853, 42 USC 423(d)(2)(C), 1382(c)(a)(3)(J) Supplement Five 1999. The law indicates that individuals are not eligible and/or are not disabled where drug addiction or alcoholism is a contributing factor material to the determination of disability. After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that claimant does not meet the statutory disability definition under the authority of the DA&A Legislation because his substance abuse is material to his alleged impairment and alleged disability.

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

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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.

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