

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]

Claimant

Reg. No: 2010-6122

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date: [REDACTED]

[REDACTED]

Oakland 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 [REDACTED]. 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 July 9, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On July 21, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On August 3, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On September 10, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On November 13, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing work in the form of medium work per 20 CFR 416.967(c), unskilled work per 20 CFR 416.968(a) pursuant to Medical Vocational Rule 203.28 and commented that this maybe consistent with past relevant work. However there is no detailed description of past work to determine this.

(6) The hearing was held on January 6, 2010. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(7) Claimant submitted additional medical information on and it was sent to State Hearing Review Team on January 11, 2010.

(8) On January 13, 2010, the State Hearing Review Team again denied claimant's application stating that claimant was capable of performing other work in the form of medium work per 20 CFR 416.967(c), unskilled work per 20 CFR 416.968(a) pursuant to Medical Vocational Rule 203.28 and with the additional information received does not effect the claimant's functional capacity. The State Hearing Review Team Decision of November 13, 2009 is upheld.

(9) Claimant is a 42-year-old man whose birth date is [REDACTED] Claimant is 5' 10" tall and weighs 145 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills. Claimant has a year and a half of vocational school through [REDACTED] hool.

(10) Claimant last worked in 2006 caring for elderly people. Claimant also worked in 2003 as a commercial sign maker and worked in commercial signs for approximately 14 years.

(11) Claimant alleges as disabling impairments: mental impairment, hernia repair, back pain, lower back pain, knee problems, depression, anxiety, sleep disorder and bipolar disorder.

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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) 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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

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

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

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

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

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

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

...Medical reports should include –

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

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

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

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

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

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

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

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge

reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

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

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

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

At Step 1, claimant is not engaged in substantial gainful activity and has not worked since 2006. Claimant is not disqualified from receiving disability at Step 1.

A physical residual functional capacity assessment on the record dated [REDACTED] from the Social Security Administration indicates that claimant should avoid hazardous

machinery and heights but he does not have communicative limitations. He does not have visual limitations. He does not have manipulative limitations. He can occasionally lift or carry 50 pounds, frequently lift 25 pounds, stand about 6 hours in an 8 hour day, sitting about 6 hours in an 8 hour work day and can push and pull including operation of hand and foot controls on an unlimited basis. (pp28-34 of new evidence)

A Medical Examination Report on file from [REDACTED], indicates that claimant is 5'7" tall and weighed 144 pounds and his blood pressure was 120/80 and he can stand or walk less than 2 hours in an 8 hour work day, and that he can occasionally lift 20 pounds or less and he frequently can lift 25 or 50 pounds or more. He can do simple grasping, reaching, pushing and pulling and fine manipulating with his upper extremities and can operate foot and leg controls with both his left and right leg and feet. Claimant did have some problems with comprehension, memory, sustained concentration, following simple directions, reading and writing, and social interaction. He does need help with transportation and personal care. (pp5-6)

A psychiatric evaluation in the file dated [REDACTED] indicates that claimant was on time for his appointment. He was appropriate, cooperative with fair personal hygiene and normal psychomotor activity. He was spontaneous. Speech was coherent, relevant and goal directed. His thought process was reality oriented, goal directed. There was no evidence of delusional thinking noted and no evidence of psychosis noted. He denied hearing voices. His affect was blunted to appropriate. His mood was mostly normal. He was oriented x3. He has fair memory for recent and remote events of life. He was able to recall his date of birth as [REDACTED]. He was able to recall the names of the presidents as Mr. Bush and Mr. Clinton and his general fund of knowledge appeared fair. He was able to do Serial 7's, $100-7=93$, $93-7=86$, and $86-7=79$. He interpreted the proverb, "Don't cry over spilled milk" as don't get

upset over things that are not big enough. He stated the similarity between a tree and a bush is that both grow out of the ground and the difference is that the tree is taller than the bush. His insight appears fair. Judgment for routine events of life appeared fair. He denied suicidal or homicidal ideations. His ability to relate to others appeared fair. His ability to manage funds appeared fair and the prognosis was guarded to fair. (p10) Claimant denied any active medical problems. (p9) The mental residual functional capacity assessment in the file indicates that that claimant was only moderately limited or not significantly limited in all areas. Claimant appeared to be capable of carrying out simple chores when sober. Claimant was somewhat irritable and moody but retained the capacity for work type interaction with peers and supervisors. Attention and concentration was somewhat limited. Claimant would need minimal redirection to complete tasks. Claimant has limited frustration tolerance but has capacity to deal with change, which is not dramatic or frequent. Claimant allegations are partially credible as he tends to emphasize symptoms and limitations and minimize abilities. Severity is not fully supported by medical examinations. He may not be completely credible, i.e. because of his alcohol abuse. There is no medical opinion given, claimant appears to function relatively well on medication. He would have difficulty with complex cognitive tasks, but contains the capacity to carry out simple tasks in a competitive setting. (pp23-25 of new information)

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 insufficient corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. This Administrative

Law Judge cannot give way to the treating physicians DHS-49, Medical Examination Report, because it is internally inconsistent. On the one hand, the report indicates the claimant has recurrent tachyarrhythmias on Inderal, tremors, alternating mood and cognitive and memory problems, neck pain, left knee pain and back pain. Claimant did not have any severe physical restrictions except that he was not supposed to stand or walk less than 2 hours in an 8 hour day. There are no laboratory or x-ray findings listed in the DHS-49, Medical Examination Report, to support the physical limitations that claimant places upon himself. The form indicates that assistive devices are not medically required or needed for ambulation; however, no opinion is rendered regarding how long claimant can sit. The clinical impression that claimant is deteriorating; however, the only finding made is that claimant does have some mental limitations. 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, the DHS-49 has restricted claimant 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.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers mental limitations resulting from his reportedly depressed or bipolar state. The Mental Residual Functional Capacity Assessment in the record indicates that claimant is only moderately or not limited in most areas. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment.

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 no objective medical evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from at any job. In addition, it is documented that claimant does have some substance abuse in the form of use of alcohol, which would have contributed to his physical and any alleged mental problems. Claimant must be denied benefits at Step 2 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. Claimant's past relevant work was as a caregiver for the elderly and as a commercial sign maker. There is insufficient objective medical/psychiatric evidence in this record upon which this Administrative Law Judge could base a finding that claimant is unable to perform work which he has engaged in, in the past. Therefore, if claimant had not already been denied at Step 2, he would again be denied 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).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

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 testified on the record that he does not have a driver's license because he does have a prior DUIL and that he makes frozen meals one time per day. Claimant does grocery shop every two weeks and he needs help with a ride. Claimant testified that he does laundry and does the dishes and he watches television for three hours per day. Claimant testified that he can stand for 2 hours, sit for 2 hours, walk 200 yards, but not squat. Claimant testified that he can only minimally bend at the waist. Claimant testified that he can shower and dress himself, but not tie his shoes and touch his toes. His level of pain on a scale from 1-10 is a 10 with medication and without medication is an 8. Claimant testified that he is right-handed and he has a hyper-extended right thumb. Claimant testified that his knees hurt. Claimant testified that the heaviest weight that he can carry is 10 pounds. Claimant testified that he does smoke 3-4 cigarettes per day and his doctor has told him to quit and he is not in a smoking cessation program. Claimant testified that he does drink 3-4 shots of vodka per week and his doctor has told him to quit.

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 information contained in the file indicates that the claimant has a history of alcohol and tobacco abuse. Applicable hearing is a drug abuse and alcohol (DA&A) legislation, Public Law 104-121, Section 105. The law indicates that individual's are not eligible and/or not disabled with drug addiction or alcoholism as 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 the alleged impairments and alleged disability. Even if he were to be found disabled under the other steps, claimant would not be able to be found disabled because he does continue to drink and his substance abuse is material to his alleged impairments and alleged disability.

Claimant does continue to smoke and drink alcohol despite the fact that the doctors told him to quit.

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

Claimant is not in compliance with his treatment program and is disqualified from receiving disability at this step also. There is insufficient objective medical 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 testified on the record and was able to answer all of the questions on the record. 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. In addition, claimant did testify that he does receive some relief from his pain medication. 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 42), with a high school education and an unskilled work history who is limited to light work is not considered disabled, pursuant to Medical-Vocational Rule 202.08.

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. PEM, 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.

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.

/s/ _____
Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 2, 2010

Date Mailed: April 6, 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.

LYL/alc

cc:

A large black rectangular redaction box covering several lines of text in the distribution list.