

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: 2010-7741
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 6, 2010
Macomb 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 January 6, 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 June 5, 2009, claimant filed an application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits for the months of March, April and May, 2009.

(2) On September 9, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On September 17, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On September 22, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On December 3, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: Based upon the evidence in the file it is reasonable to conclude that the claimant would be capable of performing medium exertional tasks of a simple and repetitive nature. The claimant is 24 years old, has a high school education and no gainful employment. Using the above residual functional capacity and using Vocation Rule 203.28 as a guide, the claimant would retain the ability to remain gainfully employed at this time. MA-P, retroactive MA-P and State Disability Assistance were denied by this decision. Listings 3.03, 5.01, 9.08 and 12.04/05/06 were considered in this determination.

(6) Claimant is a 24-year-old man whose birth date is [REDACTED]. Claimant is 5' 9" tall and weighs 223 pounds. Claimant is a high school graduate and was in special education because he was learning disabled and dyslexic

(10) Claimant last worked November, 2007 as a pizza dishwasher. He was fired from the job after a year because there were too many workers. **(the report says he was fired "because he was too slow and couldn't keep up...I wanted you to see this so you can review it.)**

(11) Claimant alleges as disabling impairments: bipolar disorder, obsessive compulsive disorder, dyslexia, learning disability, diabetes mellitus, asthma, gastroesophageal reflux disease and obesity.

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 2007. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a psychiatric/psychological medical report dated [REDACTED] indicates that claimant had a GAF of 70 with mild symptoms, good social and activities of daily living function but occupational problems. He is unable to read or do math or write at a functional level but he would be managed to his funds with family

support. He was diagnosed with learning disabilities, a reading disorder, math disorder and disorder of written expression, as well as borderline intellectual function, asthma, allergies to pollen, dust, mold and ragweed, a speech impairment, acid reflux and a vision impairment.

On general observation, claimant arrived early for his interview. He came with his mother on the city bus. He completed the office paperwork with his mother's assistance. He was neatly dressed in age appropriate casual sweatshirt and jeans. He was well nourished, 5'8" and weight 168 pounds and he wore glasses. His short dark blond hair was well cared for. He has seriously misaligned teeth and his speech was clear and well enunciated. He made a strong effort to communicate effectively. His movement was somewhat clumsy. Eye contact was direct. He was well oriented to time, person and place. His interaction was appropriate and friendly. He appeared relaxed and responded easily to the examiner. He appeared emotionally well adjusted but depended on others for life planning. For example, he was, for a number of years for job placement but when he became unemployed, he did not think to ask that his MRS case be reopened. His state of mental activity was spontaneous, logical and well organized. He reported a poor memory and difficulty learning new tasks. Previously a job coach assisted him learning job tasks. He denied hallucinations and delusions. That there was no evidence of suicidal or homicidal thoughts. He denied depression, anxiety or anger management problems. He appeared well adjusted emotionally. He could repeat four numbers forward and four numbers backward in immediate memory. He could recall three of three items with a three minute delay. He named five men who have been United States Presidents as Bush, Clinton, Bush, Nixon and Reagan. When asked who was Neil Armstrong he stated the first man on the moon. Who invented the telephone; Thomas Edison. Name four large cities; Detroit, Dallas, Chicago and Los Angeles. Tell us about a famous in the news; Obama wants to be President of

the United States. When asked to tell about an important event in the news, he stated that we went to Iraq to take Hussein out. Serial 7's. 100 – 93 – 83 – 76. He acted confused and discontinued. He couldn't do his times tables except for $4 \times 5 = 20$. When asked about "the grass is greener on the other side of the fence", he stated it is better on the other side and when asked about "don't cry over spilled milk" he stated things just happen. Don't cry. When asked how a bush and tree were alike, he stated they were both plants and when asked how the bush and the tree were different, a bush is short, a tree is tall. When asked "how are a dog and lions alike" and he stated they are both animals and when asked "how are dogs and lions different" he stated a lion is a cat and a dog is a dog. In judgment, when he was asked what he would do if he found an envelope that was sealed, addressed and had a new stamp he said he would take it to the post office or mail it. When asked what he would if he was in a theater and was the first to see smoke and fire, he stated he would let people know and pull the alarm.

A medical examination report dated [REDACTED] indicates the clinical impression is that he is stable. He could frequently lift 50 pounds or more and he could stand or walk about 6 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 and pushing and pulling but not fine manipulating. He could not operate foot or leg controls. The doctor stated that he had poor/fine motor control and rapid finger control and he would not suggest a job with foot control from evaluation due to stress and lack of ability to respond in time. Claimant had some mental limitations in the form of comprehension, memory, sustained concentration, following simple directions, and social interaction and that he needed repeated clarification to follow simple commands and he should be in anger management and will need to be refocused. He also needs assistance and directions

for completing his activities of daily living. The medical examination report was signed by a nurse practitioner. (pgs. 20-21)

A health medical clinic assessment dated [REDACTED] indicates that claimant was 62" without shoes and weight 214 pounds. His blood pressure was 110/70 and his pulse was 87 beats per minute regular. His respiratory was 14 beats per minute. His temperature was 97 degrees Fahrenheit. His vision without glasses in the right eye was 20/15 and the left was 20/200. An HEENT: Sclera/PERLA normal. Vision was good in the right eye and very poor in the left eye. Fundi appear to be normal as far as being visualized through undilated pupil. Ears were clear. Hearing was normal. NECK: supple. Thyroid was not enlarged. JVP was normal. Carotid arterial pulsations were normal. There was no carotid bruit. There was no lymphadenopathy. CVS: PMI are not palpable due to obesity. Heart sounds are feeble due to obesity.

Claimant was comfortable sitting in supine position. Accessory muscles of respiration were not working. There was no cyanosis. Trachea was central. The chest expansion was 40" on deep expiration and 41 1/2" on deep inspiration. There was no tenderness over the anterior chest wall. Percussion note was resonant. Cardiac and liver dullness were not obliterated. Breath sound was vesicular with no adventitious sounds. Vocal fremitus and resonance were normal. ABDOMEN: soft with no organomegaly. No tenderness. Bowel signs were normal. Rectal examination was deferred. On the skin there is a healed scar over the abdomen. The patient did not shave his beard but had no rash or pigmentation. In the extremities he had no clubbing, cyanosis or varicose veins. Peripheral pulsations were well palpable in the lower extremities. Both feet were warm. No femoral bruit. SPINE: Claimant could stand without support. No loss of cervical or lumbar lordosis. No tenderness of the spine. All movements in

the lumbar spine were pain free and of normal range. SLR was 90 degrees on both sides with no complaint of pain over lower back. BONES & JOINTS: flexing of the hip was restricted to 90 degrees and the knee to 105 degrees but they were pain free. No pain, swelling, limitation of movements or crepitus in any other joint. No wasting of the muscles around the joints. Grip is 5/5 in both tested manually. He ambulated fairly well without any walking aid. He could tiptoe, on the heel and tandem gait. He could squat and arise from a squatting position. He can get up from a supine position, on and off the examination table without help. He could dress, undress and open the door. No loss of dexterity of movements of the fingers. In the nervous system, higher function, cranial nerves, power, tone sensations, cerebellar functions were normal. Deep reflexes and superficial reflexes are normal. Gait as mentioned in the bones and joints. His diagnosis and impression were bronchial asthma which is well controlled with the present regime. There was no evidence of emphysema or cor pulmonale. He was not breathless on normal physical exertion. His GERD was well controlled with the present regime. He was also diagnosed with bipolar depression and obsessive-compulsive disorder. His memory was fair. He was fair in grooming and hygiene. He responded fairly well to the examining situation. He had obesity with no lamination of mobility from it. (pgs. 17-18)

In the mental residual function of capacity assessment in the file, claimant was only moderately limited in the ability to carry out detailed instructions, the ability to maintain social and appropriate behavior and to adhere to basis standards of neatness and cleanliness and the ability to set realistic goals and make plans independently of others. He was not significantly limited in any other areas. (pgs. 15-16)

At Step2, 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. The DHS 49 indicates that examination areas are normal and that claimant does have some mental limitations with concentration and ability to follow instruction. The clinical impression 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, the 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.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers mental limitations resulting from his reportedly bipolar or obsessive compulsive disorders _____. The Mental Residual Functional Capacity Assessment in the record indicates that claimant's findings are basically normal. 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 past relevant work. Claimant's past relevant work was light work. As a dishwasher, does not require strenuous physical exertion. There is insufficient objective medical evidence 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 lives with his parents and he is single with no children under 18. Claimant testified that he does not have a driver's license but rides the bus every couple of days for about 30 minutes and he usually goes to [REDACTED] or gets a ride from his parents. Claimant testified that he cooks 1 time per week and cooks things like chicken, pork chops and full meals. Claimant testified that he grocery shops 1 time per month and needs help with remembering when the coupons expire and how much has to spend. Claimant testified that he cleans his home by doing laundry, clean his bedroom, vacuum and doing dishes. Claimant testified that he

does shovel snow and pick up after his lab/sheltie dog. Claimant testified that he builds model rockets as a hobby. Claimant testified that he can stand for two hours, sit for 15 to 20 minutes at a time, walk for 1 mile, squat, bend at the waist, shower and dress himself, tie his shoes and touch his toes. Claimant testified that his level of pain on a scale of 1 to 10 without medication is a 7 and with medication is a 2. Claimant testified that he is left handed, has nothing wrong with his hands or eyes and nothing wrong with his legs and back.

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.

Claimant testified on the record that he does have bipolar disorder and dyslexia as well as obsessive-compulsive 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 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 oriented to time, person and place.

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

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. 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. Claimant would benefit from a referral to Michigan Rehabilitation Services.

Accordingly, the department's decision is AFFIRMED.

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

Date Signed: March 17, 2010

Date Mailed: March 17, 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/vmc

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