

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: 2010-8697
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 2, 2010
Wayne 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 February 2, 2010. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly determine that claimant was no longer eligible to receive Medical Assistance (MA-P) and State Disability Assistance (SDA) based upon a determination that claimant has had medical improvement?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) Claimant was receiving State Disability Assistance benefits based upon an April 24, 2008 approval of State Disability Assistance benefits.

(2) Claimant filed an application on April 14, 2008 for Medical Assistance based upon disability and State Disability benefits.

(3) On April 24, 2008, the Medical Review Team approved claimant for State Disability Assistance benefits until August 2008, but denied claimant's application for Medical Assistance benefits stating that claimant's impairments lacked duration.

(4) In August 2009, a medical review was again conducted for both Medical Assistance and State Disability Assistance. Apparently, a Medical Assistance benefit case had been opened for claimant erroneously based upon the 2008 approval of State Disability Assistance benefits.

(5) On September 25, 2009, the Medical Review Team denied claimant continued Medical Assistance and State Disability Assistance benefits stating that claimant could perform other work.

(6) On October 1, 2009, the department caseworker sent claimant notice that his Medical Assistance and State Disability Assistance benefit case would be cancelled effective September 25, 2009.

(7) This Administrative Law Judge finds it is unclear as to whether or not claimant was receiving Adult Medical Program or Medical Assistance benefits.

(8) On October 8, 2009, claimant filed a request for a hearing to contest the department's negative action.

(9) On December 14, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation:

The claimant has a history of substance abuse. He reports hearing voices and having paranoid thoughts, but was spontaneous and logical on examination. He is able to understand, retain and follow simple instructions. He had a gunshot wound to the right arm and has some limitations but no loss of dexterity.

The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates the claimant retains the capacity to perform simple, unskilled, light work. In lieu of detailed work history, the claimant will be returned to other work. Therefore, based on the claimant's vocational profile of younger individual, limited education and a history of unskilled work, MA-P is denied using Vocational Rule 202.17 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above-stated level for 90 days.

(10) Claimant is a 45-year-old man whose birth date is [REDACTED]. Claimant is 5' 7" tall and weighs 189 pounds. Claimant attended the 10th grade and has no GED. Claimant is able to read and write and does have basic math skills.

(11) Claimant alleges as disabling impairments: a gunshot to the left arm, schizoaffective disorder, post-traumatic stress disorder, depression, anxiety and bronchitis as well as acid reflux.

(12) Claimant alleges that he worked approximately four years before the hearing at a car wash, washing cars, and he has also worked at [REDACTED] a hi-lo. Claimant testified that he was denied disability through the Social Security Administration in September 2009.

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).

In the instant case, it is unclear as to whether or not claimant receives Medical Assistance benefits or the Adult Medical Program. If claimant receives the Adult Medical Program, then he should continue to receive the Adult Medical Program as it is not contingent upon whether or not claimant is disabled. If he was eligible to receive benefits through the Medical Assistance program, the department should determine whether or not claimant should receive Adult Medical Program benefits, as a Medical Assistance case would have been opened in error.

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

The objective medical evidence on the record indicates that in August 2009, the claimant was 5' 7" and weighed 198 pounds. Lung fields were clear to auscultation and percussion bilaterally. Heart sounds were normal. He had decreased strength against resistance of the right upper extremity, 4/5 on the right and 5/5 on the left. He could not fully extend his right arm at the elbow (page 13). Grip strength was 4/5 on the right and 5/5 on the left (page 18). Gross and fine dexterity appeared bilaterally intact. Gait was normal (page 13).

The mental status examination, dated August 2009, showed the claimant was able to take care of his basic needs. He was spontaneous and logical, but had some pressured speech. He admitted to hearing voices of someone talking to him. He had some paranoid thoughts. His mood was depressed and his affect was constricted (page 8). Diagnosis includes schizoaffective disorder—bi-polar type, rule out cocaine/alcohol abuse and rule out generalized anxiety disorder. The claimant was able to understand, retain and follow simple instructions (page 9).

Claimant testified on the record that he could stand for 15 minutes, and he can sit for 2 to 3 minutes at a time. Claimant testified that he can walk down his driveway and he can squat, bend at the waist, shower and dress himself, touch his toes and tie his shoes although that is difficult for him. Claimant testified that his level of pain on a scale from 1 to 10 is a 10 without medication, and is a 7 with medication. Claimant testified that he is right handed and that his left arm is fine but his right hand has a gunshot wound. Claimant testified that his legs and feet are fine, his back is fine and his knees are fine. Claimant testified that he does smoke ½ a pack of cigarettes per day and that his doctor has told him to quit, and he is not in a smoking cessation program. Claimant testified that he stopped smoking crack cocaine two years before the hearing. Claimant testified that in a typical day he gets up and watches television and makes his breakfast, and then strolls to bed.

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. Claimant does have a gunshot wound to the right arm, but he is able to use his arm and can do light lifting. Claimant does retain bilateral manual dexterity. There are no medical findings 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.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers mental limitations resulting from his reported depression or schizoaffective disorder/bi-polar state. A medical examination report, dated May 7, 2009, indicates that claimant does have some mental limitations in the form of memory, sustained concentration and social interaction, but the clinical impression is that he is stable and that he can lift 10 pounds or less, that he can stand or walk about 6 hours in an 8-hour day and he can sit about 6 hours in an 8-hour day. Assistive devices are not medically required or needed for ambulation, and he can do simple grasping, reaching, pushing and pulling, and fine manipulating with his left hand. He can operate foot and leg controls with both feet/legs (page 24). Claimant was able to answer all of the questions at the hearing and was responsive to the questions. Claimant was oriented to time, person and place during the hearing.

A psychiatric evaluation, dated August 26, 2009, indicates that claimant came to the appointment by himself. He stated that his sister gave him a ride. He is 5' 7" tall and weighed 198 pounds. Hygiene and grooming were fair. He had trouble remembering things. He was punctual to the appointment. He was in contact with reality. He had adequate self-esteem, no psychomotor agitation or retardation was present. He seemed to be motivated to get better. There does not seem to be any tendency to exaggerate symptoms. He had insight into his problems. His stream of mental activity was spontaneous and logical. He had some pressured speech. His mental train of thought content: The claimant admitted to hearing voices of someone talking to him. The patient paces in the hallways. He also has paranoid thoughts believing that people are out to hurt him. He has a history of making two suicidal attempts in the past. Currently, he denies any suicidal or homicidal thoughts. The patient described his mood as being depressed. His

affect was constricted. The patient said that the date was August 26th, 2009 and the place was a clinic. He was able to repeat three digits forward and two digits backward in immediate memory, and he was able to recall three items immediately and after three minutes, he was able to recall two out of three items. When asked to name the past few presidents, he said Obama and Clinton. His stated his date of birth was [REDACTED]. When asked to name five large cities, he said, "Detroit, New York and Los Angeles." When asked to name current famous people, he said "Obama." In calculations, to subtract 7 from 100, he said he couldn't do any calculations. When asked about the grass is greener on the other side, he said, "It just looks green." He was able to identify similarities and differences between a tree and a bush, and if he saw a stamped-addressed envelope, he would mail it. He was diagnosed with schizoaffective disorder, bi-polar type, and it was to rule out cocaine and alcohol abuse, and generalized anxiety disorder. His GAF was 40 and his prognosis was guarded, and he would not be able to manage his own funds. Based upon the examination, the claimant is able to understand, retain and follow simple instructions, and generally restricted to performing routinely simple, repetitive tasks due to his psychosis with psychomotor agitation. He would be restricted to work that involves brief superficial interaction with co-workers, supervisors and the public. He is subject to relapses and the added pressure of employment would be a major factor that would result in further decompensation (pages 8, 9).

The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. This Administrative Law Judge finds that claimant was able to answer all the questions at the hearing and was responsive to the questions. He was oriented to time, person and place. 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 find that claimant should be able to perform his past work at a car wash or driving a hi-lo, even with his impairments. There is no medical 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. Claimant does not really have any physical limitations based upon the medical reports and his mental limitations would not restrict him from performing simple, repetitive tasks like washing cars. 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/psychiatric 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 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 DA&A, 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 contained in the file indicate that claimant has a history of tobacco and drug abuse. Applicable herein is the Drug Abuse and Alcohol (DA&A) legislation, Public Law 104-121, Section 105. The law indicates that individuals are not eligible and/or 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 even if claimant were to be determined disabled, he does not meet the statutory disability definition under the authority of the DA&A Legislation because his substance abuse was material to his alleged impairments and alleged disability.

Claimant has continued to smoke cigarettes even though 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 gainful activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

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. As long as claimant stays away from crack cocaine, which would have contributed to his physical or any alleged mental problems, and continues to remain in compliance with his medication, claimant is stable enough to perform some tasks.

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 45), 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. 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.

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 this case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED. The department is ORDERED to conduct an investigation to determine whether or not claimant was receiving the Adult Medical Program. If he was receiving the Adult Medical Program, he should continue to do so, and if it has been cancelled it should be reinstated.

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

Date Signed: May 24, 2010

Date Mailed: May 25, 2010

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

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