

STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 20111493  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Hearing Date:  
January 13, 2011  
Muskegon County DHS

**ADMINISTRATIVE LAW JUDGE:** Landis Y. Lain for Marlene Magyar

**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 13, 2011. Claimant and his grandmother personally appeared and testified.

This hearing was originally held by Administrative Law Judge Marlene Magyar. Marlene Magyar is no longer affiliated with the Michigan Administrative Hearing System Administrative Hearings for the Department of Human Services and this hearing decision was completed by Administrative Law Judge Landis Y. Lain by considering the entire record.

**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 22, 2010, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On September 27, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical Vocational Rule 202.20.
- (3) On September 30, 2010, the department caseworker sent claimant notice that his application was denied.

- (4) On October 5, 2010 claimant filed a request for a hearing to contest the department's negative action.
- (5) On October 25, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and decision: the objective medical evidence presented does not establish a disability at the listing or equivalence level. The claimant retains the capacity to perform at least medium unskilled work. In following the sequential evaluation process the claimant is not engaged in substantial gainful activity. The claimant's impairments do not meet or equal the intent of a Social Security listing. He retains the capacity to perform at least unskilled medium 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. Therefore, based on the claimant's vocational profile of a younger individual with 12 years of education and a semiskilled/skilled work history, MA-P is denied using Vocational Rule 202.24 as a guide. Retroactive MA-P was review and denied. SDA is denied per PEM 261.
- (6) On the date of hearing claimant was a 43-year-old man whose birth date is [REDACTED]. Claimant is 5'11" tall and weighs 150 pounds. Claimant is right handed and smokes 5 packs of cigarettes per week. Claimant is a high school graduate. Claimant is able to read and write and does have basic math skills.
- (7) Claimant last worked in 2007 in a factory. Claimant was incarcerated from 1996-2006 and he had a job for approximately 1 year.
- (8) Claimant alleges as disabling impairments: neck and shoulder problems, arthritis in the hips and legs, neck problems, leg circulation problems, arthritis and depression.

### **CONCLUSIONS OF LAW**

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

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

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

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

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

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

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

...Medical reports should include –

(1) Medical history.

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

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

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

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

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

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

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

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

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

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

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

At Step 1, claimant is not engaged in substantial gainful activity and has not worked since 2007. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that on examination from September 2009 to March 2010 claimant was alert and oriented x3. The treating physician reported pain intensity is out of proportion to patient's appearance and guarded movement. On exam the heart was functioning within normal rhythm. Blood pressure was 130/80. The lungs were clear to auscultation. There were muscle spasm and tenderness over the lumbar spine. Gait was normal. He could perform at least medium work (pp. 74-81).

At the [REDACTED] mental status examination, claimant was alert and oriented x3. He had organized thought and was pleasant. He remembered his life history. Thought content was adequate. He is independent in daily activities. He visits with others. He has a significant history of substance abuse. He could perform at least unskilled work. A psychological evaluation dated [REDACTED] indicates that claimant was 42 years old and 5'11" tall and weighed 145 pounds. He stated his health stinks. He was ambulatory using a cane and he was right handed and did not wear glasses. He was 10 minutes late for his appointment having been brought by his grandmother. He does have a driver's license. He had no posture problems noted but he did walk very slowly with a shuffling gait, using a cane for support. He eats one meal per day and sleeps 6-7 hours out of 24. He bathes 3 times a week and he brushes his teeth almost daily but he claims that his teeth are very bad. The claimant appears to be in contact with reality. He was cooperative and generally pleasant and talkative but initially he appeared to be somewhat intoxicated. He had slow speech and some spastic movements of portions of his body. He complains that his blood pressure is sky rocketing. There were no motor coordination problems noted besides the use of the cane. He described his self esteem as 7 on a scale from 0-10. The claimant was oriented, alert and spontaneous. His speech was at times clear and coherent at times somewhat slurred. His thought processes were relevant, connected and somewhat concrete. He denied delusions, hallucinations, and persecutory thoughts or obsessions. He did have black outs in the past and states that he has fainted and had a seizure 3 months ago (p. 79).

The claimant's affect was somewhat depressed and at times he was tearful. The claimant was fully oriented to time, person and place. In memory he was able to recite 5 numbers forwards and 3 numbers in reverse. He did recite the 3 objects that were named for him and could recall all 3 of them 3 minutes later. He correctly identified the current president giving the names of Clinton, Bush, Carter, Ford as past presidents. He gave his birth date as [REDACTED]. He named 5 large cities as Cincinnati, Illinois, San Antonio, and Minnesota. He was unable to identify any current famous people but he gave as a current event too much killing. The claimant was able to subtract 7's from 100 but he was able to 3's from 20. He correctly multiplied 3\*4 but gave the response of 84 to 7\*8. When asked to explain the grass is greener proverb, he stated, "you're jealous", and when asked to explain the spilled milk proverb, he stated, "don't sweat it". In similarities and differences, when asked how a bush and a tree were alike, he said they have green leaves, and when asked how they were

different, he said, "God made one with berries and one with fruit, one is short and one is tall". For judgment, when asked what he would do if he found a stamped addressed envelope, he said, "give it to the person it belongs to" and when asked what he would do if he discovered a fire in a theatre, he said, "look for an exit and escort the people out". When asked about his future plans, he stated, "I don't know, be a good individual I guess" \*(p. 78).

He was diagnosed with major depressive disorder, generalized anxiety disorder, alcohol abuse, history of drug abuse in remission and a GAF of 50-55 and the prognosis is guarded for a simple unskilled work on a sustained and competitive basis. He would not be able to maintain his own benefit funds due to alcohol abuse (p. 77).

A mental residual functional capacity assessment in the record dated, [REDACTED] indicates that claimant was not significantly limited in most areas and was only moderately limited in the ability to understand and remember detailed instructions; the ability to carry out detailed instructions; the ability to maintain attention and concentration for extended periods; the ability to perform activities within a schedule, maintain regular attendance and be punctual with customary tolerances; the ability to complete a normal work day and work sheet without interruptions from psychologically based symptoms; and to perform at a consistent pace without an unreasonable number and length of rest periods; and the ability to maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness (pp. 74-75).

At Step 2, claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. There is insufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant has reports of pain in multiple areas of his body; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. There are no laboratory or x-ray findings listed in the file which support claimant's contention of disability. 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, 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 42), with a high school education and a semiskilled 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 contained in the file 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 does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that claimant was not eligible to receive Medical Assistance and/or State Disability Assistance.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of light or sedentary work even with his impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.

Landis

/s/  
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Y. Lain  
Administrative Law Judge  
for Maura D. Corrigan, Director  
Department of Human Services

Date Signed: June 21, 2011

Date Mailed: June 21, 2011

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

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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