

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

IN THE MATTER OF:



Reg. No: 2011-352  
Issue No: 2009  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date: December 1, 2010  
Kent County DHS

**ADMINISTRATIVE LAW JUDGE:** Landis Y. Lain

**HEARING DECISION**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on December 1, 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)?

**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 April 28, 2010, claimant filed an application for Medical Assistance and Retroactive Medical Assistance benefits alleging disability.
- (2) On June 18, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work.
- (3) On June 24, 2010, the department case worker sent claimant notice that his application was denied.
- (4) On August 6, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (5) On October 21, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the objective medical evidence supports the findings of the MRT that the claimant will retain the ability to perform sedentary task. The claimant's impairments do not meet such equal intensity or severity of a Social

Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of sedentary exertional work. Therefore, based on the claimant's locational pro-follow-up 4yrs old a high school education and a history of light unskilled employment MA-P is denied using vocational rule 201.27 as a guide. Retroactive MAP was considered in this case and was also denied. SDA was not applied for by the claimant. Listing 1.02, 1.03, 1.04, and 11.14 were considered in this determination. (Page 36)

- (6) Claimant is a 44-year-old man whose birth date is [REDACTED]. Claimant is 5' 9" tall and weighs 260 pounds. Claimant testified that he cannot read well but he can add and subtract and count money.
- (7) Claimant last worked in 2009 for a security company. Claimant also worked as a janitor and order picker. Claimant does not receive State Disability Assistance, because he is involved with Michigan Rehabilitation Services.
- (8) Claimant alleges as disabling impairments: gunshot wounds to the back in 1996, knee pain, arthritis, and depression.

### **CONCLUSIONS OF LAW**

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 2009. Claimant is not disqualified from receiving disability at Step 1.

In addition, claimant does receive unemployment compensation benefits. In order to receive unemployment compensation benefits under the federal regulations, a person must be monetarily eligible. They must be totally or partially unemployed. They must have an approvable job separation. Also, they must meet certain legal requirements which include being physically and mentally able to work, being available for and seeking work, and filing a weekly claim for benefits on a timely basis. The Administrative Law Judge finds that claimant has not established that he has a severe impairment or combination of impairments which have lasted or will last the durational requirement of 12 months or more or have kept him from working for a period of 12 months or more. Claimant did last work in 2009. Claimant does receive unemployment compensation benefits.

The subjective and objective medical evidence on the record indicates that claimant testified that he lives with a friend and is single with no children under the age of 18 living with him. Claimant does received State Disability Assistance and Food Assistance Program benefits. Claimant does not have a driver's license because his license was suspended but he does take the bus to appointments and usually rides the bus for about 45 minutes. Claimant testified he does cook everyday and cooks things like pig's feet, neck bones, and chitterlings. Claimant testified his friend grocery shops for him and his friend cleans for him and that he watches television 6 hours per day. Claimant testified that he's depressed because he can't play with his 5-year old son and life just depresses him he has had depression since 2008. Claimant stated that he can stand for 5 or 10 minutes, sit for 5 or 10 minutes and can walk 20 feet with a cane. Claimant testified that he cannot squat or bend at the waist and cannot shower and dress himself, tie his shoes or touch his toes. Claimant testified his level of pain on a scale from 1-10 without medication is a 9 and with medication is a 7. Claimant testified his leg and feet are fine but his knees have arthritis in them. Claimant testified he can carry 20lbs and

that he drinks on the holidays and usually drinks two 16 oz beers. Claimant testified that he stopped doing crack last month.

On February 4, 2009, physician notes examination indicates that on physical examination claimant was afebrile. His vitals were stable except for a slight tachycardia of 119 his diastolic of 109 secondary to pain. He is a middle aged African American male who was somewhat uncomfortable but alert, awake and appropriate. He was able to ambulate under his own power. His heart was unremarkable for acute findings. There was no trauma of trauma or inspection. Lungs were clear there was an odor of alcohol on his breath which was minimal. His heart had regular rate or rhythm of S1 and S2. His abdomen was obese, soft and benign and his pelvic was stable to AP and lateral compression. In his extremities he had no clubbing, cyanosis or even a period straight legged testing is negative bilaterally. In the back there was some paraspinal muscle tenderness in the right lower lumbar and sacral regions. There is no bony midline tenderness. There is no CDA tenderness. There is no evidence of external trauma. The neurologic area he was alert, awake and appropriate. Cranial nerves 2-12 are grossly intact. Motor and sensory examination is non focal. His reflexes are +1 and +2 in symmetric in the lower extremities. The diagnosis was exacerbation of right lower back pain with clinical spasm. (Page 5 & 6).

On June 20, 2009, examination report indicates that claimant had non-toxic and no acute distress. The irregular rate of rhythm without murmurs rubs or clicks. His lungs were clear to auscultation bilaterally without wheezes, rhonchi or rales. His abdomen was soft, non-tender and non-distended and he had positive bowel sounds. In the extremities there was no edema, clubbing, or cyanosis. The patient demonstrated no sensory or motor deficits. The patient's reflexes are 2/4. Sensations intact. The patient's back was thoroughly examined demonstrating no signs of trauma. The patient does not have pain to palpation directly over the lumbar spine. He does have some Paraspinal tenderness. His skin was clear, dry and intact. No rashes, lacerations, and pallor or jaundice. His MRI was obtained and reviewed and he was given a shot and diagnosed with acute chronic back pain.

There was a diagnostic radiology of the left knee February 8, 2010, for pain. Note: There is no AP lateral and internal/external rotation oblique views were obtained and there were no fractures or dislocation. No fluid distension of the joint capsule is evident. There are no signs of arthritis, bone destruction or calcified loose bodies. There may be a small amount of quadriceps calcific tendonitis but the upper anterior patella is not seen in its entirety. Except for the possible small amount of quadriceps calcific tendonitis, no left knee abnormalities are seen in the views. (Page 10).

February 23, 2010, claimant was seen in the hospital for an abscess between his scrotum and the rectum. The wound was spontaneously drained and there was no surrounding warmth or erythema. (Page 12)

Medical examination report dated April 16, 2010, indicated that claimant was normal in all areas of examination. He was 68" tall and weighed 264 lbs his blood pressure was

124/80 he was right handed dominant and he had 20/20 vision in both eyes. The muscular skeletal his range of motion of flexion, ext erior and side bend no muscle atrophy and no weak ness. The clinical impressions was that he was stable he could occasionally carry 20 lbs or less, he could stand or walk less than 2 hours in an 8 hour day. He did not meet assistive devices for ambul ation. He could use both upper extremities for simple gras ping, reaching pushing/pulli ng and fine manipulating and he could operate foot and leg contr ol of both feet and leg. He had no mental limitations. (Page 30 & 31)

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 clinic al findings that suppor t the reports of symptoms and limitations made by t he claimant. There ar e no labor atory or x-ray findi ngs listed in t he file. T he clinical impression is that cl aimant 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 restricte d himself from tasks associated with occupational functioning based upon his r eports of pain (sympt oms) 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 insu ffficient to establish that claim ant has a severely restrictive physical impairment.

Claimant alleges the following disabling mental impairments: depression.

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 di sorders (descriptions of restrict ions of activities of daily living, social functioning; c oncentration, persistence, or pace; and ability to tolerat e increased mental demands associated wit h com petitive work)... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

There is insufficient objective medical/ps ychiatric e vidence in the record indicating claimant suffers severe mental limitations . There is no ment al 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 w ould prevent claimant from working at any job. Claimant was or iented to time, person and plac e during the hearing. Claimant was able to answer all of the questi ons at the hearing and was responsive to the questions. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impair ment. 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 thi s 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 (44), with a high school education and an unskilled work history who is limited to light work is not considered disabled.**

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

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

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

**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

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

Date Signed: February 15, 2011

Date Mailed: February 16, 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.

LYL/ds

cc:

