

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

IN THE MATTER OF:



Reg. No: 2011-1049
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 23, 2010
Midland & Gladwin 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 November 23, 2010. Claimant personally appeared and testified. Claimant's sister and girlfriend also appeared and testified at this hearing.

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 March 17, 2010, claimant filed an application for Medical Assistance, State Disability Assistance, and retroactive Medical Assistance benefits alleging disability.
- (2) On July 19, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work.
- (3) On July 22, 2010, the department caseworker sent claimant notice that his application was denied.
- (4) On August 9, 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 recommendation: the objective medical evidence does not fully support the findings of the treating physician. The evidence does support that the claimant would reasonably retain the ability to perform light exertional tasks. There is no evidence of psychiatric limitations. The claimant retains the physical residual functional capacity to perform light exertional work; there is no evidence of any psychiatric limitations. The claimant's past work was light and skilled in nature. Therefore, the claimant retains the capacity to perform their past relevant work as a stylist. MA-P is denied per 20 CFR 416.920(e). Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 due to the capacity to perform past relevant work. Listings 1.02, 1.03, 1.04, 11.14, 12.04 and 12.06 were considered in this determination.
- (6) Claimant is a 49-year-old man whose birth date is [REDACTED]. Claimant is 5'10" tall and weighs 232 pounds. Claimant attended the 10 grade and has a GED and also has 2 years of cosmetology school and is a licensed cosmetologist.
- (7) Claimant last worked November 2009 as a self-employed hairdresser in his own salon. Claimant has also worked as a waiter, dishwasher, and has a drywall and concrete hanger. Claimant currently works 2 hours per day doing home health care in the form of dishes sweeping and mopping and going to the doctor's appointments and doing light laundry. Claimant earns \$ [REDACTED] per month in employment.
- (8) Claimant alleges as disabling impairments: degenerative disc disease, pinched sciatic nerve, depression, and anxiety, back and shoulder pain, loss of balance, arthritis, and herniated and bulging disc as a result of a 1999 motor vehicle accident.

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).

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 although he does work as a home health care aide doing light dishes, sweeping and mopping and going to doctor's appointments as well as doing light laundry for a client. Claimant does earn \$[REDACTED] per month. Claimant is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence on the record indicates that claimant testified that 2 hours a day he works at the home health care aide doing dishes, sweeping and mopping and going to the doctor's appointments with his client as well as doing light laundry. Claimant testified that he is homeless and stays with others and he is single with no children under 18 and earns \$[REDACTED] per month in employment income. Claimant testified that he does receive Food Assistance Program benefits but does not have a driver's license and usually calls a friend to take him where he needs to go.

Claimant testified that he does cook 1-2 times per week and cooks things like macaroni and cheese, hamburger and soup and he grocery shops 1 time per week and he needs help carrying groceries. Claimant testified that he does dishes, sweeps, mops and does laundry and he doesn't do any outside work. Claimant testified that he fishes, hunts and camps as a hobby and he went last summer 1 time per week fishing. Claimant testified that he watches TV hardly ever. Claimant testified that he can stand for 15-20 minutes, sit for 15-20 minutes and walk less than a quarter mile. Claimant cannot squat or bend at the waist but stated that he is able to shower and dress himself and tie his shoes if he puts his foot up. Claimant testified that he cannot touch his toes and he has pain in his knees from torn ligaments. Claimant testified that his level of pain on a scale from 1-10 without medication is an 8 and with medication is a 6. Claimant testified that he is left handed and his hands and arms are weak and his legs and feet are weak. Claimant testified that he can carry 10 pounds and he does smoke $\frac{3}{4}$ of a pack of cigarettes per day and his doctor has told him to quit and he is not in a smoking cessation program. Claimant testified that he quit drinking alcohol 10 years ago and he no longer uses marijuana. Claimant testified that in a typical day he gets up and sits and drinks coffee, then piddles around the house, straightens up, eats lunch, goes to the doctor, goes to the bank and shops and does his errands for his home health care client.

A June 12, 2010, medical examination indicates that the claimant was oriented x3. He was able to repeat 6 digits forward and 5 digits backward in his immediate memory. In his recent memory he was able to recall 3 out of 3 objects after a 3 minute interval. He named the President before our current President as Bush. He named other President's during his lifetime as Bush, Carter, and Nixon. He stated his birth date as [REDACTED]. He named the current President of the United States as Obama. He named 5 large cities as Los Angeles, New York, Oklahoma City, Lansing, and Nashville. He named current famous people as Tom Cruise and Garth Brooks. He described a current news event as the oil spill and a baby was murdered. The claimant's performance of serial 7's was 100, 93, 86, 79 and 72. The claimant's performance of single digit addition and multiplication was $6+5=11$, $7+2=9$, $5*4=20$, $9*6=54$, $28/7=4$. When asked what does the saying "The grass is greener on the other side of the fence", means he said that life is better on the other side of the fence. When asked what the saying "Don't cry over spilled milk", means bad things today tomorrow is a different day. When asked how a bush and a tree are alike he replied that they are both plants. When asked how they are different he replied that the size is different. In judgment when he was asked what he would do if he found a stamped addressed envelope he replied that he would mail it. When asked what he would do if he discovered a fire in a theatre, he replied that he would get out. Claimant was determined to meet the criteria for diagnosis of adjustment disorder with mixed anxiety and depression. He denied having any mental health problems, prior to his health problems. He reported since having health problems however he has felt depressed or he has a low mood, has some thoughts of suicide, and sleeps for a good portion of the day. In addition, he reported that he has anxiety symptoms where he gets nervous about not being able to accomplish his responsibilities and gets nervous around his girlfriends children. It appears that at this time he would have difficulty working related to his health condition since he reports a bad back and his knee problems are his main difficulty rather than his

mental health conditions. If his physical condition were to improve his mental health condition would most likely improve as well. He was diagnosed with adjustment disorder with mixed anxiety and depression and a GAF of 55. His prognosis was fair and he would be able to manage his own benefit funds (p. 26-28).

A June 16, 2010, physical examination indicates that the claimant was cooperative in answering questions and following commands. The patient's immediate, recent and remote memory was intact with normal concentration. The claimant's insight and judgment are both appropriate. The claimant provided a good effort during the examination. He was wearing a T-shirt, shorts and crocs. He appeared depressed. He was in no acute distress. His blood pressure on his left arm was 100/90 and his pulse was 82 and regular. Respiratory equals 12. Weight equals 235 pounds. Height equals 70" without shoes. His skin was normal. In his visual acuity in the right eye was 20/13 and the left eye was 20/30 with corrective lenses. Pupils were equal, round and reactive to light. The claimant could hear conversational speech without limitation or aides. The neck is supple without masses. Breath sounds were clear to auscultation and symmetrical. There is no accessory muscle use. In the heart, there was regular rate and rhythm without enlargement. There is a normal S1 and S2. In the abdomen there was no organomegaly or masses. Bowel sounds are normal and obese. In the vascular there was no clubbing or cyanosis detected. There is no edema appreciated. The peripheral pulses are intact. There is no evidence of joint laxity, crepitation or effusion. Grip strength remains intact. Dexterity is unimpaired. The claimant could open a door. The claimant had no difficulty getting on and off the examination table, mild difficulty heel and toe walking, mild difficulty squatting and mild difficulty standing on either leg. There is no thoracic spine straightening. There is lumbar spine straightening. There is tenderness in the left SI joint. Range of motion studies was normal. Neurological: cranial nerves were intact. Motor strength and tone are normal. Sensory is intact to light touch and pinprick. Reflexes are 2+ and symmetrical. Romberg testing is negative. The claimant walks with a stepped wide base gait without the use of an assist device. The conclusion was degenerative arthritis and he did have lumbar and thoracic spine straightening with associated. He had tenderness in the left S1 joint. He did have some difficulty doing orthopedic maneuvers due to pain. He does walk with a small stepped wide base gait. He did appear to be depressed today and did have an element of de-conditioning. He did have well-preserved range of motion and much of his sentimentality did appear to be referred from depression. Weight reduction and pain management will be helpful. His long-term prognosis does appear to be fair, but lack of motivation is contribution to his disease process (pp. 31-33).

This Administrative Law Judge did consider all 149 pages of medical reports contained in the file in making this decision.

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. 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 and anxiety.

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 no 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 its 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 49), with a high school education and an unskilled work history who is limited to light work is not considered disabled.

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/

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

2011-1049/LYL

Date Signed: January 31, 2011

Date Mailed: January 31, 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/alc

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