

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

IN THE MATTER OF:



Reg. No: 2011-200
Issue No: 2009
Case No: [REDACTED]
Hearing Date:
November 16, 2010
Jackson 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, an in-person hearing was held on November 16, 2010. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED]

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and retroactive Medical Assistance (retro 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 2, 2010, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.
- (2) On April 27, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work.
- (3) On June 23, 2010, the department case worker sent claimant notice that his application was denied.
- (4) On September 20, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (5) On October 12, 2010, the State Hearing Review Team again denied claimant's application stating that it had insufficient evidence and

requested current medical records from May 2010 to the present as well as a complete physical examination by a licensed physician.

- (6) The hearing was held on November 16, 2010. At the hearing, claimant waived the time periods and requested to submit additional medical information.
- (7) Additional medical information was submitted and sent to the State Hearing Review Team on January 5, 2011 and on January 18, 2011.
- (8) On January 20, 2011, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the claimant is HIV positive. His CD4 count was 87 in March 2010, but he reported on December 2010, that his CD4 was 228. The claimant denied any opportunistic infections and any hospitalizations due to AIDS. In March 2010 claimant had a CT scan that showed a renal mass. However, in December 2010 the claimant reported that he had not been diagnosed with any cancer. In December 2010, the claimant's weight was 205 pounds which is actually a weight gain since April 2010 when his weight was 173 pounds (p. 85). He was admitted in [REDACTED] due to DVT in the right arm. In December 2010 he had some tenderness and limitation of motion of the right hip and lumbar spine. His gait was limping but he was able to ambulate without any assistive device. His examination was otherwise unremarkable. The claimant was depressed but his mental status was otherwise unremarkable. The claimant's impairment's do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform at least simple unskilled sedentary work. In lieu of detailed work history, the claimant will be returned to other work. Therefore, based on the claimant's vocational profile of a younger individual, 12th grade education and a history of unskilled and semi-skilled work, MA-P is denied using Vocational Rule 201.27 as a guide. Retroactive MA-P was considered in this case and is also denied.
- (9) Claimant is a 40-year-old man whose birth date is [REDACTED]. Claimant is 5'8" tall and weighs 205 pounds. Claimant is a high school graduate. Claimant is able to read and write and does have basic math skills.
- (10) Claimant last worked 2003 doing construction and carpentry. Claimant has also worked as a forklift driver.
- (11) Claimant alleges as disabling impairments: HIV positive, deep vein thrombosis in the right arm, renal mass, full blown AIDS and Perthes Disease in the hip. Claimant also alleges fatigue, back pain, pain in the knees, problems with concentration, memory, depression and anxiety.

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 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 2003. Claimant is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence on the record indicates that claimant is a 40 year old man, whose birth date is [REDACTED]. Claimant testified that he lives with his brother and his father and brother-in-law support him. Claimant is single with no children under 18 that live with him. He has his children on the weekend and they are ages 11, 13 and 22. Claimant does not have any income and receives Food Assistance Program benefits. Claimant does not have a driver's license and gets a ride from Catholic charities. Claimant does cook daily and cooks things like vegetables, burritos and frozen dinners. Claimant does grocery shop every 2 weeks and he leans on the cart or rides the cart and needs a ride to get there. Claimant stated that he does vacuum, clean, fold laundry, clean the bathroom and do dishes and he cuts the grass with a riding lawn mower. Claimant testified that he likes to do wood work and he watches TV 4 hours per day. Claimant testified that he can stand for 5-10 minutes, sit for an hour and a half and can walk 2-3 blocks. Claimant testified that he can squat slightly and he has knee pain and back pain. Claimant testified that he can shower and dress himself but on bad days he needs help with his sock and shoes and he usually has 2 bad days per week. Claimant testified that he can tie his shoes and can touch his toes on good days. Claimant testified that his level of pain on a scale from 1-10 without medication is a 9 and with medication is a 6. Claimant testified that he had some problems with his right arm because of the deep vein thrombosis and his legs and feet have pain. Claimant testified that the heaviest weight that he can carry is 10 pounds and that hurts and he does smoke 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 does not drink alcohol and stopped smoking marijuana over a year before the hearing. Claimant testified that in a typical day he gets up and smokes, takes the dogs outside. Claimant testified that he has a German Shepherd and a Pit Bull. Claimant then plays Madden football on the X-box for 2 hours, eats, and then spends 2 hours a day in the bathroom because of his medications. He eats, does Sudoku puzzles, takes the dogs out and smokes. Claimant testified that he was in the hospital on March 2010 for 15 days for the deep vein thrombosis and angioplasty.

A mental status examination dated [REDACTED] showed the claimant had no history of psychiatric admissions and was not receiving any mental health treatment. He had a history of substance abuse. He had appropriate eye contact. His speech was fluent and spontaneous. His affect was restricted with modest reactivity. His mood was anxious. Thought processes were linear and logical. He denied hallucinations and delusions. Diagnosis was major depressive episode, rule out dysthymia (new pages 14—15). The claimant was admitted in [REDACTED] due to right upper extremity DVT. He underwent Thrombolysis of the right upper extremity DVT (new page 1).

His CB4 count at that time was 87 (new page 23). In [REDACTED] the claimant reported that he was diagnosed with HIV about 5 years ago. He CB4 was previously low but he reported that it was currently 228. He denied any opportunistic infections and did not remember being hospitalized for any AIDS related illness. He stated that he had not been diagnosed with any cancer. He feels tired and run down. He has a left calf Perthes Disease since he was a child. On examination he was 68" tall and 205 pounds. Peripheral pulses were palpable. His legs did show mild pitting edema. There was no calf tenderness. Power was 5/5 in all 4 limbs. Speech was normal. Hand grip was 100 pounds with the right hand and 120 pounds with the left hand. Gait was limping on the right leg. No assistive device was necessary for ambulation. He could not walk on heels or toes due to hip pain. He had mild tenderness on palpation without spasm of the lumbar spine. Range of motion was mildly reduced due to leg pain. Straight leg raise was 70 degrees on the right and 90 degrees on the left. He had decreased range of motion of tenderness of palpation on the right hip (new pages 25-29).

A physical examination [REDACTED] he was 68" tall and weighed 205 pounds and his pulse was 96 per minute. Respiratory rate was 20 per minute, blood pressure 148/98. Vision without glasses is 20/15 in the right eye and 20/20 in the left eye. Pupils were equal and reactive. There was jaundice or pallor. There was no throat redness. Neck is soft and subtle. There is no thyromegaly or lymphadenopathy. There are no carotid bruits on jugular venous distention. The lungs were clear with good air entry bilaterally. Percussion is normal. Anterior and posterior diameter of the chest were always normal. There is no cyanosis or clubbing noted. No accessory muscles or respiration are used. First and second heart sound rhythm is regular. Peripheral pulses are palpable. Legs show mild pitting edema. There is no calf tenderness. The abdomen was soft and non-tender. There is no rebound, guarding or hepatosplenomegaly. Bowel sounds are positive. A neurological examination: the patient is alert, awake, and oriented x3. Cranial nerves II-XII appear intact. Power is 5/5 in all four limbs. Speech is normal. Hand grip is 100 pounds on the right and 120 pounds on the left hand. Gait shows limping on the right leg. No assistive device needed for ambulation. He could not walk on heels or toes due to hip pain. He could not squat down. The claimant can tie shoe laces and button clothing. The claimant could get up onto the examination table independently. Hands do not show any synovitis. Wrists and elbows do not show swelling, redness or tenderness. Range of motion is normal. Right shoulder shows no swelling, redness or tenderness. He was told not to raise the right arm at the shoulder so these movements were not tested. The left shoulder shows no swelling, redness or tenderness with normal range of motion. Cervical spine does not show tenderness or spasms. Range of motion is normal. Lumbosacral spine shows mild tenderness on palpation with no spasms. Range of motion is slightly reduced due to leg pain. Straight leg raising on the right is 70 degrees and the left leg is 90 degrees. Right hip shows tenderness on palpation without redness or hip. There is decreased range of motion due to pain. Left hip shows normal range of motion with no tenderness. Knees and ankles do not show redness, swelling or tenderness. Range of motion is normal (p. 27, new material).

This Administrative Law Judge did consider all 136 pages of medical reports contained in the file in making this decision.

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. 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.

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 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 40), 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 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 indicate that claimant has a history of tobacco and drug 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).

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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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