

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201129151

Issue No: 2009/4031

[REDACTED]

Hearing Date:

May 31, 2011

[REDACTED] County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

REHEARING 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 May 31, 2011. Claimant personally appeared and testified. Claimant was represented at the de novo hearing by [REDACTED]. This Administrative Law Judge considered the entire record when making this decision.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's continued 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 April 6, 2009, claimant submitted an application for Medical Assistance, Retroactive Medical Assistance and State Disability Assistance benefits, alleging disability. (Client Exhibits D1-D2)
2. On May 5, 2009, the claimant's representative sent an e-mail to the department caseworker requesting a status update on claimant's case. (Claimant Exhibit D5)

3. On August 25, 2009, [REDACTED] sent a letter to the department caseworker, again requesting that the department locate the pending Medical Assistance application and requesting a hearing. (Client Exhibit D6)
4. On September 2, 2009, the department caseworker sent [REDACTED] an e-mail which indicated that the April 6, 2009 application was properly registered on the system. The e-mail also contained a request that [REDACTED] withdraw its' August 25, 2009 request for a hearing. (Client Exhibit D7)
5. [REDACTED] filed a hearing withdrawal form which indicated that the Medicaid case for the patient was pending. (Client Exhibit D10)
6. On September 22, 2009, the application was processed and the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical Vocational Rule 203.28. (Department Exhibit 144)
7. There is no evidence in the record that the department caseworker sent claimant or [REDACTED] notice that the April 6, 2009 application was denied.
8. On November 24, 2009, claimant filed an application for Medical Assistance benefits, alleging disability.
9. On April 30, 2010 the medical review team denied claimant's application, stating that claimant could perform other work pursuant to Medical Vocational Rule 202.22. (Department Exhibit 167)
10. On May 6, 2010, the department caseworker sent claimant notice that his Medical Assistance and State Disability Assistance benefits case would be denied. The notice did not state an application date, but it did include a reason for the denial. (Client Exhibit D14, pages 1-2)
11. On July 21, 2010, claimant's representative filed a request for a hearing to contest the department's negative action. The hearing request, (Claimant's Exhibit D15), states:

Case [REDACTED]
4-6-10 application/retro 1/10
5/6/10 MRT denial notice

12. On August 16, 2010, the State Hearing Review Team again denied claimant's application stating that it had insufficient evidence and requesting a copy of the August 25, 2010 Mental Examination scheduled by Social Security disability. (Department Exhibits 168-169)
13. On November 4, 2010 a hearing was held before Administrative Law Judge Colleen Mamelka.
14. The contents of the hearing Register #2010-46236 are herein incorporated in its entirety.
15. ALJ Mamelka failed to leave the record open to accept the additional information requested by the State Hearing Review Team as is required by Department policy.
16. On March 23, 2011, ALJ Mamelka issued a Decision and Order which stated:

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Claimant disabled for purposes of the MA-P benefit program.

Accordingly, it is ORDERD: (sic)

1. The Department's determination is REVERSED.
 2. The Department shall initiate review of the November 24, 2009, application to determine if all other non-medical criteria are met and inform the Claimant and his Representative of the determination in accordance with Department policy.
 3. The Department shall supplement for any lost benefits (if any) that the Claimant was entitled to receive if otherwise eligible and qualified in accordance with Department policy.
 4. The Department shall review the Claimant's continued eligibility in April 2012 in accordance with Department policy. (Reg #2010-46236 Decision and Order)
17. ALJ Mamelka issued a decision that applied only to the November 24, 2009 application and did not address the April 6, 2009 application.

18. On April 1, 2011, claimant's representative filed a request for a re-hearing stating:

We are appealing the application date stated in the hearing decision. Also the application date is not mentioned in the hearing summary. DHS stated that this was a 9-09 application in which actually was from a previous hearing request withdrawn as DHS re-registered a 4-09 application in 9-09. (Claimant's Exhibit D16)

19. On May 4, 2011, Administrative Law Judge Manager Marya Nelson Davis vacated the prior hearing decision and granted the request for rehearing.
20. Claimant is a 28 year old man whose birth date is [REDACTED] Claimant is 6' 4" tall and weighs 250 pounds. Claimant attended the 10th grade and has a GED. Claimant testified that he is not able to read and write very well. He can add, subtract and count money. He was in special education for all subjects in school.
21. Claimant last worked about January 2010 for [REDACTED] as a vending machine loader. He has also worked as an ice loader.
22. Claimant's medical records indicated that he alleges as disabling impairments: hypertension, depression, anxiety, acute renal insufficiency, heart condition, high cholesterol, anemia, dizzy spells, psychotic features, post traumatic stress disorder, panic attacks and suicide attempts.
23. On May 18, 2009, claimant had a hearing with the Social Security Administration.
24. On May 31, 2011, the de novo rehearing was held by Administrative Law Judge Landis Y. Lain at an in-person hearing in [REDACTED]
25. On May 31, 2011, at the rehearing, new medical exhibits were submitted (Exhibits A1-2, B1-14, and C1-22).
26. On June 1, 2011, the new information was sent to the State Hearing Review Team for further review.
27. On June 23, 2011, the State Hearing Review Team again denied claimant's application stating in its analysis and recommended decision: the medical evidence present does not establish a disability at the listing or equivalence level. The collective medical evidence shows that the claimant is capable of his past job in stock work. The medical evidence of record indicates that the claimant retains the capacity to perform a wide

range of medium unskilled work. Therefore, based on the claimant's profile (younger individual, 12th grade education, and medium work history); MA-P is denied using vocational Rule 203.28 as a guide. Retroactive MA-P was considered in this case and is also denied.

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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) 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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

A **rehearing** is a full hearing which is granted when:

- The original hearing record is inadequate for purposes of judicial review;.
- There is newly discovered evidence **that existed** at the time of the original hearing, that could affect the outcome of the original hearing decision.

The department, client or authorized hearing representative may file a written request for rehearing/reconsideration. Request a rehearing/ reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing, and that could affect the outcome of the original hearing decision.
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion.

- Typographical, mathematical, or other obvious error in the hearing decision that affects the rights of the client.
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the client must specify all reasons for the request. BAM, Item 600, page 32-33. SOAHR (Michigan Administrative Hearing System (MAHS)) will either grant or deny a rehearing/reconsideration request and will send written notice of the decision to all parties to the original hearing.

SOAHR (MAHS) grants a rehearing/reconsideration request if:

- The information in the request justifies it; **and**
- **There is time to rehear/reconsider the case and implement the resulting decision within the standard of promptness; see STANDARDS OF PROMPTNESS in this item.**
- **If the** client or authorized hearing representative made the request and it is impossible to meet the standard of promptness, the client or authorized hearing representative may waive the timeliness requirement in writing to allow the rehearing/reconsideration.

If a rehearing is granted, or if the need for further testimony changes a reconsideration to a rehearing, SOAHR (MAHS) will schedule and conduct the hearing in the same manner as the original.

Pending a rehearing or reconsideration request, implement the original Decision and Order unless a circuit court or other court with jurisdiction issues an Order which requires a delay or stay.

If such an order is received by the client, SOAHR (MAHS), the court or the Legal Affairs, or if there are questions about implementing the order; see Administrative Handbook manual Legal & FOIA Issues (AHN) item 1100, How to Obtain Legal Services. BAM, Item 600.

Department policy dictates:

Medical evidence provided by the client will be reviewed by the Medical Review Team (MRT) and a physician.

The MRT reviews medical evidence for disability or blindness, and certifies the client's medical eligibility for assistance. MRT does not accept electronic medical records in the form of CDs or DVDs. Inform providers on the DHS-1555 that paper copies are required. Requests for medical records from the Social Security Administration should include the same information. The local office **must** designate a medical contact person to coordinate the flow of medical information between the DHS specialist and the MRT.

Medical evidence provided by the client at the appeals level will be reviewed by the State Hearings Review Team (SHRT), composed of a medical consultant and SHRT examiner. The SHRT reviews medical evidence, for disability or blindness, and certifies favorable decisions regarding the client's medical eligibility for assistance. BEM Item 815, page 1.

If the client was seen by a physician through Disability Determination Service (DDS), a copy of the examination report must be requested from the respective DDS office. If the case is no longer active with DDS, the report is to be requested through the local Social Security Administration district office. BEM, Item 815, page 3.

When information indicates the client is mentally impaired, has **not** previously been evaluated or is **not** receiving treatment, contact the MRT to determine the type of examination needed. BEM, Item 815, page 4

Department policy dictates that the Medical Review team or State Hearing Review Team:

Certify whether the client is disabled or blind. Record certification on the DHS-49-A.

- If medical basis exists, go to step 19.
- If medical basis does **not** exist, go to step 22.
- **If additional medical evidence is required, indicate/authorize on the DHS-49-A what specific evidence is needed.** Complete an DHS-49-C, Deferral Monitor, to notify the specialist of the deferral, whether it could have been avoided and how. Go to step 22. (emphasis added)

The MRT/SHRT will determine disability/blindness for retroactive MA months even if retroactive MA is **not** requested by the client at application. If the client subsequently applies for retroactive MA, refer to the DHS-49-A for the disability determination for those retroactive months. Indicate the date and type of any additional medical evidence that will be needed if a review of continued disability or blindness is required. BEM, Item 815, pages 5-6.

In this case, the State Hearing Review Team specifically requested that additional information be provided to assess claimant's medical/mental status for his disability applications. ALJ Mamelka erred when she failed to send the additional medical information back to the State Hearing Review team for further review

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 January 2010. Claimant is not disqualified from receiving disability at Step 1.

At Step 2, claimant has the burden of proof of establishing that he has a severely restrictive physical or mental impairment (s) that has lasted or is expected to last for the duration of at least 12 months.

The subjective evidence on the record indicates: Claimant testified on the record that he lives with his mother in an apartment and is single with no children under 18 who live with him. He receives Medical Assistance and State Disability Assistance as a result of the Decision and Order dated March 23, 2011 signed by ALJ Mamelka. Claimant also receives Food Assistance Program Benefits. Claimant does have a driver's license and drives 1 time per week. He usually drives himself to therapy. He drove himself ten miles to the hearing. He does not cook or grocery shop because he does not like to. He does wash dishes and clean his room. He does no outside work. As a hobby, he watches baseball. He watches two hours of television per day. He plays video games for two hours per day in 20 minute time increments. Claimant testified that he does not have any disabling physical impairments, but does get dizzy spells. Claimant stated that he can stand for 10 minutes, sit for an hour and walk for 30 minutes at a time. Claimant stated that his back and knees are fine and that he can shower and dress himself, tie his shoes, bend at the waist and touch his toes. He stated that he cannot squat. Claimant testified that he has no physical pain. He stated that he is right handed and that his hands/arms are fine and his legs/feet are also fine. He stated that the heaviest weight he can carry is 20 lbs. Claimant stated that in a typical day he gets up at 8:00

a.m., eats breakfast, watches television, plays on the computer for two hours, watches baseball at night and goes to bed. (Claimant's Hearing Testimony)

The objective evidence on the record indicates: A July 26, 2010 physical examination indicates that the patient is tall, morbidly obese, ambulatory, not in acute distress, responding to questions appropriately even if patient is confused. Temperature is 98.2, heart rate is 25, respiratory rate is 18, pulse oximetry is 98% in room air, blood pressure is 116/78. HEENT: Unremarkable. Neck : supple. Neck glands not enlarged. No carotid bruits. No thyromegaly. No jugular venous distention. Lungs: Clear to auscultation. Heart: S1, S2 is regular. No murmur. Abdomen: soft, non-tender. No hepatosplenomegaly. Bowel sounds are positive in all four quadrants. Extremities: No edema. Peripheral pulses palpable, volume 2+. No cyanosis. No clubbing. Skin: There are multiple tattoos all over the body, especially the both extremities, upper and lower. Neurologic: Patient is alert, orientated. No focal neurological deficits. Gait: within normal limit. He was diagnosed with hypertension, Dyslipidemia, and Obesity. (B7)

There is insufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical. Claimant has no reports of pain in multiple areas of his body; 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 a finding of physical 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 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: Major Depression with psychotic features, Personality Disorder, Anxiety, Posttraumatic Stress Disorder, Bipolar Disorder and panic attacks

On December 11, 2008, February 9th, August 29th, and September 24, 2009, the Claimant attended follow-up appointments mainly for a review of his prescribed treatment.

On January 8, 2009, the Claimant was admitted to the hospital with the diagnosis of severe depression with suicidal ideations. The Claimant was discharged the following day with the diagnoses of sinus tachycardia, severe depression with suicidal ideas, hyperlipidemia, and bipolar disorder. The Global Assessment Functioning ("GAF") was 55. The Claimant was instructed to follow up as a cardiac outpatient. The Claimant was originally supposed to be admitted to the psychiatric wing; however, he did not qualify at that time for admission. (104-105)

On January 11, 2009, the Claimant was admitted to the hospital due to mental status changes. Presenting symptoms were anhedonia, anxiety, depressed mood, hopelessness, impaired concentration, sleep disturbance, and worthlessness/guilt. Further, the Claimant was incapable of reality-based thinking. The Claimant was discharged to the partial hospitalization program ("PHP") on January 15th with the diagnoses of major depressive disorder, recurrent and severe without psychotic features. The GAF was 30. The Claimant was discharged from the PHP on January 20th with the diagnosis of major depression, recurrent with a GAF of 42. (20-23)

On February 5, 2009, the Claimant's clinical record was updated noting the treatment start date of November 28, 2007. The treatment ended on May 12, 2008, after the Claimant was a no call/no show for his last scheduled appointment on April 23, 2008, and without any attempts to reschedule. The case was closed per agency policy. The diagnosis was adjustment disorder with anxiety. The GAF was 61-70 and his prognosis was good. (127-138)

On November 8, 2009, the Claimant was admitted to the hospital after overdosing and being found with a suicide note. The Claimant was discharged the following day to the psychiatric hospital with the diagnoses of polydrug overdose, suicide attempts, hyponatremia, acute renal insufficiency, depression, hypertension, anemia, transient hypotension (resolved), and sinus tachycardia (resolved). (E1-E2)

A Mental Residual Physical Capacity Assessment dated July 20, 2010, indicates that claimant is only moderately limited in most areas and not significantly limited in all other areas. He is not markedly limited in any area. His axis GAF is 55 and he was diagnosed with Major Depression, Personality Disorder NOS and medication abuse. (A1-A2)

Claimant was admitted July 22, 2010, because he was irritable and agitated. He was put into two point restraints in ER. He alleged withdrawal symptoms from [REDACTED]. He was diagnosed with major depression and an AXIS GAF of 22. (B12) On July 25, 2010, the Claimant was brought via petition to the hospital with suicidal ideations. The Claimant had abused his [REDACTED] medication so his psychiatrist discontinued it resulting in withdrawal symptoms. A mental status examination dated July 30, 2010, states: This 28 year-old white male, mildly obese, appeared to the state age. His is cooperative and friendly. His hygiene and grooming are fair. His gait is normal. His affect is appropriate to the thought content, and his mood is calm. His speech is clear and goal directed. He denies suicidal or homicidal ideations. He denies any psychotic symptoms. He is alert and orientated. His memory is fair. He had a limited insight and his judgment is average. His prognosis was guarded. (B1) He was diagnosed with Major Depression, Benzodiazepine dependence, hypertension and an Axis GAF of 40. He is advised to stay away from benzodiazepines. (B2)

A [REDACTED] [REDACTED] [REDACTED] [REDACTED] psychiatric evaluation dated August 18, 2010, indicates that claimant's stream of mental activity was organized. His speech was relevant and without unusual ideation. His contact with reality was fair. His

self-esteem is poor. He was not motivated. He did not appear to exaggerate or minimize his symptoms. He reported he attempted suicide by over dose in January 2009. (C11) He was orientated the time person and place. His affect was blunted. He repeated 5 numbers forward and 3 backwards. He named past presidents as Obama, George Bush and gave his correct birth date. He was unable to complete serial sevens. He stated $4+3=7$ and $6 \times 4 = 24$ (C12) Claimant was diagnosed with Major Depressive Disorder, Recurrent, severe, with psychotic features; Panic Disorder without Agoraphobia, Posttraumatic Stress Disorder; Alcohol Abuse R/O alcohol dependence and an AXIS V GAF of 49. His prognosis appeared guarded and he was able to handle his own benefit funds. (C13)

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 Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented medical evidence establishing that he does have some physical and mental limitations on his ability to perform basic work activities. The medical evidence has not established that the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities if he remains drug and alcohol free and complies with his medical regime. 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.

At Step 3, listing 12.00 encompasses adult mental disorders. The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s) and consideration of the degree in which the impairment limits the individual's ability to work, and whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. 12.00A. The existence

of a medically determinable impairment(s) of the required duration must be established through medical evidence consisting of symptoms, signs, and laboratory findings, to include psychological test findings. 12.00B. The evaluation of disability on the basis of a mental disorder requires sufficient evidence to (1) establish the presence of a medically determinable mental impairment(s), (2) assess the degree of functional limitation the impairment(s) imposes, and (3) project the probable duration of the impairment(s). 12.00D. The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s) and consideration of the degree in which the impairment limits the individual's ability to work consideration, and whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. 12.00A.

A Mental Residual Physical Capacity Assessment dated July 20, 2010, indicates that claimant is only moderately limited in most areas and not significantly limited in all other areas. He is not markedly limited in any area. His axis GAF is 55 and he was diagnosed with Major Depression, Personality Disorder NOS. (A1-A2) Claimant does not meet a listing at Step 3.

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 insufficient 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 if he remains drug and alcohol free. 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 mental or physical 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 28), 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, 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 continued to drink and to smoke marijuana despite the fact that his doctor told him to quit. Claimant is not in compliance with his treatment program during the times relevant to the April 2009 application forward.

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, page 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 applications (April 6, 2009 and November 24, 2009) 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. Claimant

does have medical improvement based upon the objective medical findings in the file when he refrains from drug and alcohol abuse.

Accordingly, the department's decision is AFFIRMED.

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

Date Signed: June 30, 2011

Date Mailed: June 30, 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/db

cc:

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