

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

IN THE MATTER OF:



Ingham County DHS

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

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 received on June 3, 2011. After due notice, a telephone hearing was held on September 1, 2011. Claimant personally appeared and testified.

ISSUE

Whether the Department of Human Services (the department) properly denied Claimant's application for Medical Assistance (MA-P), Retro-MA 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 October 18, 2010, Claimant applied for MA-P, Retro-MA and SDA.
- (2) On May 11, 2011, the Medical Review Team (MRT) denied Claimant's MA application stating Claimant is capable of performing other work, pursuant to 20 CFR 416.920(f). (Department Exhibit A, pages 1-2).
- (3) On May 12, 2011, the department caseworker sent Claimant notice that his application was denied.
- (4) On June 3, 2011, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On July 16, 2011, the State Hearing Review Team (SHRT) upheld the denial of MA-P, Retro-MA and SDA benefits stating Claimant retains the

residual functional capacity to perform light unskilled work. (Department Exhibit B, page 1).

- (6) Claimant has a history of back problems, a closed head injury and schizophrenia.
- (7) On March 6, 2008, Claimant underwent a mental status examination while in jail. Mental status examination showed Claimant responded to instructions and positive criticism well. Claimant required no special assistance to complete examination process. Overall, Claimant was cooperative, motivated, and verbally responsive, attempted all tasks and worked diligently. Eye contact was good. Thoughts were logical, organized, simple and very concrete. The content of his communication was age appropriate. His mood was euthymic. Claimant was diagnosed on Axis I: History of Alcohol Dependence, History of Crack Cocaine Dependence, Provisional Cognitive Declines; Axis II: Deferred; Axis III: Closed Head Injury in 1989 or 1990 (with 10 days of coma). Headaches reported. Axis IV: Limited regular education through 8<sup>th</sup> grade. He has very limited work history and unproductive life style. He has amassed an extensive incarceration history following a Closed Head Injury. Axis V: 55. (Department Exhibits 3-5).
- (8) On December 15, 2009, reported to the emergency room for back pain. Claimant was oriented to time, place and person and his mood/affect was normal. Claimant was diagnosed with a lumbosacral strain/sprain and prescribed morphine, and valium and released. (Department Exhibits 59-61, 63-65).
- (9) On December 23, 2009, Claimant was seen at the Emergency room for acute low back pain. Claimant was oriented to time, place and person and his mood/affect was normal. Claimant has a history of chronic back pain since motor vehicle accident in 1989. (Department Exhibits 46-51).
- (10) On December 23, 2009, the radiologist reported postop changes are seen in the left upper quadrant with a couple of surgical clips along the right side of the upper lumbar spine as well. There is a thoracolumbar curve convex to the left which may just be due to positioning of spasm. Degenerative disc disease is seen at L4-5 interspace with associated hypertrophic spurring. The other intervertebral disc spacings are relatively maintained with some minor hypertrophic spurring seen elsewhere in the lumbar spine. There is mild anterior subluxation of the body of L4 on L5 which appears to be on a degenerative basis with degenerative changes seen in the facets of the lumbar spine particularly at this level on the left. No definite fracture of the lumbar spine identified. There is a small nodule noted in the right lung base which is likely a

calcified granuloma. Old chest x-rays could confirm. (Department Exhibits 56, 58).

- (11) On October 18, 2010, a psychiatric review was completed on Claimant. The doctor noted Claimant has severe impairments including organic mental disorders, affective disorders and substance abuse addition disorders, historically more problematic. Claimant's organic mental disorders include memory impairment, perceptual or thinking disturbances, and disturbance in mood with a history of a closed head injury from a motor vehicle accident. Claimant has psychotic features and deterioration that are persistent as evidence by hallucinations and emotional withdrawal and/or isolation. Claimant's disturbance of mood, accompanied by a full or partial manic or depressive syndrome is characterized by sleep disturbance, decreasing energy, feelings of guilt or worthlessness, difficulty concentrating or thinking, thoughts of suicide and occasional thoughts of homicide and hallucinations and paranoid thinking. Claimant's functional limitations include moderate restriction of activities of daily living, marked difficulties in maintaining social functioning, extreme difficulties in maintaining concentration, persistence or pace. There is also medically documented history of a chronic organic mental or affective disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do any basic work activity with symptoms or signs currently attenuated by medication or psychological support and a residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate and he has a current history of 1 or more years inability to function outside a highly supportive living arrange with an indication of continued need for such an arrangement because he lives with his mother. (Department Exhibits 68-80).
- (12) Claimant completed the Activities of Daily Living form on October 25, 2010, indicating he was homeless and forgets appointments. (Department Exhibits 43-45).
- (13) On February 18, 2011, Claimant received a general internal medicine examination to evaluate his disabilities. Claimant was oriented to time, person and place. Cranial nerves 2-12 were grossly intact. Sensory exam was within normal limits. Cerebellar function was intact, gait was normal. Claimant stated his main disability was related to problems with low back pain, since he was injured in a motor vehicle accident. There was tenderness over the lower lumbar area. He had decreased flexion of 70 degrees and decreased extension of 20 degrees. There is no straight leg raise noted and there was no CVA tenderness. (Department Exhibits 35-36).

- (14) On April 5, 2011, Claimant underwent a psychological evaluation. Claimant's responses to the Existential Anxiety Scale and Social Avoidance and Distress Scale showed evidence of moderate to severe levels of depression characterized by persistently depressed mood, feelings of having little or no purpose in life, pessimism about the future, a reduced capacity to experience pleasure or happiness, feelings of uselessness, feelings of being all alone within the world, and significant levels of social discomfort and social avoidance. Currently, he appears to have severely impaired capabilities to understand, retain, and follow simple instructions and to perform and complete simple tasks. He appears to have severely impaired capabilities to interact appropriately and effectively with co-workers and supervisors and to adapt to changes in the work setting. It is suspected that the multiple limitations would result in severely impaired capacity to do work-related activities. Diagnostic Impressions: Axis I: Psychotic Disorder, NOS, in partial remission; Rule out schizophrenia, undifferentiated type; cocaine dependence, in remission; alcohol dependence, in remission; Axis II: Personality Disorder; Axis III: back pain; Axis IV: he exhibited severe psychosocial stressors associated with severe social and interpersonal isolation, significant psychiatric disturbance, a long history of criminal behavior, a long history of drug and alcohol abuse and reduced functional capabilities. Axis V: Current GAF: 45. Prognosis: Poor. (Department Exhibits 32-33).
- (15) Claimant is a [REDACTED] man whose birthday is [REDACTED]. Claimant is 5'3" tall and weighs 130 lbs. Claimant completed his GED and had been an apprentice in a machine shop. Claimant last worked as a cook in 1994 at his mother's restaurant. (Department Exhibits 3, 11).
- (16) Claimant had been denied Social Security disability at the time of the hearing and was appealing that decision.

#### CONCLUSIONS OF LAW

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

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, that being a five-step sequential evaluation process for determining whether an individual is disabled. (20 CFR 404.1520(a) and 416.920(a)). The steps are followed in order. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If it is determined that the claimant is or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.

At step one, the Administrative Law Judge must determine whether the claimant is engaging in substantial gainful activity. (20 CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities. (20 CFR 404.1572(a) and 416.972(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized. (20 CFR 404.1572(b) and 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that he/she has demonstrated the ability to engage in SGA. (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, he/she is not disabled regardless of how severe his/her physical or mental impairments are and regardless of his/her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the Administrative Law Judge must determine whether the claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe." (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work. (20 CFR 404.1521 and 416.921; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p). If the claimant does not have a severe medically determinable impairment or combination of impairments, he/she is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

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). 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).

At step three, the Administrative Law Judge must determine whether the claimant's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1. (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the claimant's impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement, (20 CFR 404.1509 and 416.909), the claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine the claimant's residual functional capacity. (20 CFR 404.1520(e) and 416.920(e)). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of the claimant's impairments, including impairments that are not severe, must be considered. (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, the Administrative Law Judge must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his/her past relevant work. (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as the claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the claimant to learn to do the job and have been SGA. (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If the claimant has the residual functional capacity to do his/her past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), the Administrative Law Judge must determine whether the claimant is able to do any other work considering his/her residual functional capacity, age, education, and work experience. If the claimant is able to do other work, he/she is not disabled. If the claimant is not able to do other work and meets the duration requirements, he/she is disabled.

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).

At Step 1, Claimant is not engaged in substantial gainful activity and testified that he could not remember when he last worked. According to his psychiatric exam in 2008,

Claimant last worked in 1994 at his mother's restaurant. Therefore, Claimant is not disqualified from receiving disability at Step 1.

At Step 2, in considering Claimant's symptoms, whether there is an underlying medically determinable physical or mental impairment(s)-i.e., an impairment(s) that can be shown by medically acceptable clinical and laboratory diagnostic techniques-that could reasonably be expected to produce Claimant's pain or other symptoms must be determined. Once an underlying physical or mental impairment(s) has been shown, the Administrative Law Judge must evaluate the intensity, persistence, and limiting effects of Claimant's symptoms to determine the extent to which they limit Claimant's ability to do basic work activities. For this purpose, whenever statements about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not substantiated by objective medical evidence, a finding on the credibility of the statements based on a consideration of the entire case record must be made.

At Step 2, the objective medical evidence of record is not sufficient to establish that Claimant has severe physical and/or cognitive impairments that have lasted or are expected to last 12 months or more and prevent all employment at any job for 12 months or more. Accordingly, Claimant is disqualified from receiving disability at Step 2.

At Step 3 the trier of fact must determine if the claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that Claimant's medical record will not support a finding that Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. Accordingly, Claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

At Step 4, Claimant's past relevant employment was working as a cook for his mother. At Step 4, the objective medical evidence of record is not sufficient to establish that Claimant has severe impairments that have lasted or are expected to last 12 months or more and prevent him from performing the duties required from his past relevant employment for 12 months or more. Accordingly, Claimant is disqualified from receiving disability 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 other jobs.

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).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

At Step 5, the burden of proof shifts to the department to establish that Claimant has the residual functional capacity to do substantial gainful activity. 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. See discussion at Step 2 above. Findings of Fact 7-9, 13-15.

At Step 5, the objective medical evidence of record is sufficient to establish that Claimant is capable of performing at least light work duties. Claimant alleges he suffers from a mental impairment and back pain. Claimant stated he hurts and cannot do anything, cannot bend over for very long, and that it hurts whenever he does something.

Claimant's MRI on December 23, 2009, showed degenerative disc disease and some facet joint arthropathy at the L4-L5 interspace with a mild anterior subluxation of L4 on L5 which appears to be on a degenerative basis.

Claimant's psychiatric evaluation on April 5, 2011, diagnosed Claimant with a personality disorder, a psychotic disorder in partial remission, as well as cocaine and alcohol dependence in remission. Claimant also exhibited severe psychosocial stressors associated with severe social and interpersonal isolation, a significant psychiatric disturbance and a long history of criminal behavior and reduced functional capabilities. Claimant's prognosis was poor with a GAF of 45.

However, on December 15, 2009 and December 23, 2009, when Claimant reported to the Emergency room for back pain, the doctors noted Claimant was oriented to time, place and person and his mood/affect was normal. Furthermore, on February 18, 2011, during his examination by the general internist, the doctor noted Claimant was oriented to time, person and place. Sensory exam was within normal limits. Cerebellar function was intact. Moreover, during a mental status examination in March 2008 while Claimant was incarcerated, Claimant responded to instructions and positive criticism well. Claimant required no special assistance to complete the examination process. Overall, Claimant was cooperative, motivated, verbally responsive, attempted all tasks and worked diligently. Eye contact was good. Thoughts were logical, organized, simple and very concrete. The content of his communication was age appropriate. He did not appear to engage in any exaggeration or minimization of his symptomology and denied visual or auditory hallucinations, delusions, persecutions, obsessions, thoughts of being controlled by others, unusual powers, worthlessness, weight change or homicidal ideations.

Claimant testified that he hears voices in his head, sees people that are not there and hears people saying things they are not saying. Claimant stated that the voices and hallucinations started years ago, since he was a kid. Claimant's testimony directly contradicts the statements he made during his mental status examination in 2008. Furthermore, the emergency room doctors and the general internist evaluation Claimant for back issues all noted Claimant was oriented to time, person and place and his mood/affect was normal.

Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does establish that Claimant has the residual functional capacity to perform light unskilled work. As a result, Claimant is disqualified from receiving disability at Step 5 based upon the fact that the objective medical evidence on the record shows he can perform light work. Under the Medical-Vocational guidelines, an individual approaching advanced age 50 - 54 (Claimant is 53 years of age), with a limited education (Claimant has a GED) and an unskilled work history, is not considered disabled pursuant to Medical-Vocational Rule 202.13. Accordingly, Claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

Claimant has not presented the required competent, material, and substantial evidence which would support a finding that Claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). Although Claimant has cited medical problems, the clinical documentation submitted by Claimant is not sufficient to establish a finding that Claimant is disabled. There is no objective medical evidence to substantiate Claimant's claim that the alleged impairment(s) are severe enough to reach the criteria and definition of disabled. Accordingly, Claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

The department's Bridges 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 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, 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.

Accordingly, the department's decision is AFFIRMED.

It is SO ORDERED.

/s/  
\_\_\_\_\_  
Vicki L. Armstrong  
Administrative Law Judge  
for Maura D. Corrigan, Director  
Department of Human Services

Date Signed: 9/19/11\_\_\_\_\_

Date Mailed: 9/19/11\_\_\_\_\_

**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.

VLA/ds

■ [REDACTED]