

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2012-22125
Issue No: 2009; 4031

[REDACTED]

ADMINISTRATIVE LAW JUDGE: [REDACTED]

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on [REDACTED]. The claimant appeared and provided testimony. [REDACTED] provided testimony on behalf of the department.

ISSUE

Did the Department of Human Services (DHS) properly deny claimant's Medical Assistance (MA) and State Disability Assistance (SDA) application?

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 [REDACTED] claimant applied for MA and SDA with the Michigan Department of Human Services (DHS).
2. Claimant did not apply for retro MA.
3. On [REDACTED] the MRT denied.
4. On [REDACTED], the DHS issued notice.
5. On [REDACTED] claimant filed a hearing request.
6. Claimant testified at the administrative hearing that he has an SSI application pending with the Social Security Administration (SSA).
7. On [REDACTED], the State Hearing Review Team (SHRT) denied claimant.

8. As of the date of hearing, claimant was a [REDACTED] standing 5'9" tall and weighing 163 pounds. Claimant has a GED and a few college classes.
9. Claimant testified that he smokes approximately ½ pack of cigarettes per day, has not consumed alcohol since [REDACTED] and does not use illegal drugs.
10. Claimant does not have a current driver's license.
11. Claimant is not currently working. Claimant last worked in [REDACTED] [REDACTED] Claimant has also worked as an auto mechanic and a laborer.
12. Claimant alleges disability on the basis of stents placed in his heart, anxiety, diabetes, asthma, Chronic Obstructive Pulmonary Disease (COPD), high blood pressure, high cholesterol, numbness in his right hand and arm and a rod in his left leg.
13. Claimant had a psychiatric/psychological medical report completed on [REDACTED]. The claimant was found to have adequate contact with reality during the interview. There was no evidence of psychomotor, agitation or retardation. The claimant's stream of mental activity was spontaneous and his thoughts were adequately organized. The claimant reported that he was not a depressed person, but that he did have panic attacks. The claimant appeared somewhat tense throughout most of the interview; however, he laughed at his own remarks from time to time. The claimant was oriented to time, person and place. The clinician opined that the client was capable of understanding, remembering and carrying out instructions and making decisions regarding work related matters. However, he was likely to have moderate to marked difficulty interacting appropriately with others in public and with co-workers and supervisors in the work place due to factors associated with his mood disorder and personality disorder. The claimant was diagnosed with a history of alcohol dependence, mood disorder-NOS, a panic disorder, personality disorder-NOS and assigned a Global Assessment of Functioning (GAF) of 53.
14. A [REDACTED] chest x-ray found no consolidation or cardiac decompensation was radiographically evident.
15. On [REDACTED] the claimant presented to the emergency room with abdominal pain. A CT of the abdomen and pelvis found a fatty infiltration of the liver and small calcifications demonstrated in the head and uncinata process pancreas such as could be demonstrated with the sequelae of chronic pancreatitis. No evidence for acute pancreatitis. The client was diagnosed with alcoholic gastritis.

16. On [REDACTED] the claimant reported to the emergency room complaining of chest pain. The client reported that he had consumed about [REDACTED] although, the emergency room physician documented he had consumed a [REDACTED]. The claimant was found to have acute pancreatitis, secondary to alcoholism and abdominal pain secondary to the pancreatitis. The client's liver enzymes were elevated, secondary to the alcoholism and the history of Hepatitis.

17. On [REDACTED] a psychological report was completed on the claimant. The claimant demonstrated an adequate contact with reality and reported a low level of self-esteem. His motor activity was normal and he appeared to be dependent on others for at least some of his basic needs. He demonstrated adequate levels of insight. His mental activity during the evaluation was spontaneous and well organized, although some degree of pressured speech was noted. He denied any history of hallucinations, delusions, persecutions, obsessions or unusual powers. He denied any suicidal ideation or suicide attempts. His emotional reaction during the evaluation was generally angry. The client was oriented to person, place and time. He demonstrated adequate levels of abstract reasoning and was able to differentiate similarities and differences in familiar objects. His common judgment was somewhat lacking. His posture and gait were normal. He was adequately mannered and his clothing and hygiene were appropriate for the situation. He appeared to be attentive throughout the evaluation and rapport was established adequately with him. The claimant denied any previous psychiatric hospitalization. He did report a history of inpatient substance abuse treatment and six charges for drinking and driving. The clinician opined that the client appeared to be an angry individual who has difficulty forming and maintaining relationships with others. There was indication he may have continued alcohol abuse problems. He has problems interacting with others, which appeared to be his main area of emotional concern. Claimant was diagnosed with a personality disorder-NOS and assigned a current GAF of 55. The evaluator also completed a mental residual functional capacity assessment. The claimant was rated as not significantly limited in the following categories: the ability to remember locations and work like procedures; the ability to understand and remember 1 or 2 step instructions; the ability to understand and remember detailed instructions; the ability to carry out simple, 1 or 2 step instructions; the ability to carry out detailed instructions; the ability to sustain an ordinary routine without supervision; the ability to make simple, work related decisions; the ability to complete a normal work day and work sheet without interruption from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods; the ability to maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness; the ability to be aware of normal hazards and take appropriate precautions; the ability to travel in unfamiliar places or

use public transportation and the ability to set realistic goals or make plans independently of others.

18. A [REDACTED] CT of the chest found no definite lung nodule mass or infiltrate. Mild centrilobular emphysematous changes seen in both lung apices. Coronary arterial calcifications. Mild likely inflammatory circumferential thickening of the wall of the distal esophagus maybe due to reflux esophagitis and probable fatty infiltration of the liver.
19. The claimant was admitted into the hospital on [REDACTED] due to an abnormal stress test. The claimant underwent a left heart catheterization through the radial artery with findings of [REDACTED] right coronary artery and posterior descending artery stenosis. The claimant had bare metal stent placed. The claimant had an A1C performed with a value of 5.7 during his hospital stay which indicates normal blood sugars. Therefore, the client did not appear to have significant diabetes. He was encouraged to follow his blood sugars and follow up with his primary care physician. The claimant was discharged on [REDACTED] and provided with samples of Plavix and provided a statin, a beta blocker, as well as Lisinopril. The claimant was also encouraged to stop smoking and drinking.
20. The claimant presented into the hospital on [REDACTED] complaining of a headache and upper back soreness as well as light headedness. The claimant's blood pressure was 110/80 and his breath sounds were clear after cough. He had normal heart tones with a regular rate and rhythm and no murmurs. The claimant left against medical advice.
21. On [REDACTED] the claimant presented to the emergency room complaining of dizziness. The claimant's blood pressure was 117/78. His heart had a regular rate and rhythm with no murmurs. An EKG showed a normal sinus rhythm with a rate of 79. No ST segment elevation or depression. Chest x-ray read showed no acute infiltrates, no cardiomegaly, with normal mediastinum. The claimant's blood alcohol level was [REDACTED]. The physician explained to the patient that it was difficult to evaluate him for dizziness, when every time the client was seen, his blood alcohol level was at least two times the normal limit. The claimant was discharged in good condition.
22. An [REDACTED] MRI of the abdomen found no evidence of active pancreatic inflammatory process.

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 Bridges Reference Manual (RFT).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (RFT).

Statutory authority for the SDA program states in part:

- (b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

In order to receive MA benefits based upon disability or blindness, claimant must be disabled or blind as defined in Title XVI of the Social Security Act (20 CFR 416.901). DHS, being authorized to make such disability determinations, utilizes the SSI definition of disability when making medical decisions on MA applications. MA-P (disability), also is known as Medicaid, which is a program designated to help public assistance claimants pay their medical expenses. Michigan administers the federal Medicaid program. In assessing eligibility, Michigan utilizes the federal regulations.

Relevant federal guidelines provide in pertinent part:

"Disability" is:

...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.

The federal regulations require that several considerations be analyzed in sequential order:

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point

in the review, we do not review your claim further.... 20 CFR 416.920.

The regulations require that if disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b). If no, the analysis continues to Step 2.
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 416.909(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 that meets the duration requirement? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.920(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. Sections 200.00-204.00(f)?
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? This step considers the residual functional capacity, age, education, and past work experience to see if the client can do other work. If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(g).

At application claimant has the burden of proof pursuant to:

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

Federal regulations are very specific regarding the type of medical evidence required by claimant to establish statutory disability. The regulations essentially require laboratory or clinical medical reports that corroborate claimant's claims or claimant's physicians' statements regarding disability. These regulations state in part:

...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 sure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.

- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

Applying the sequential analysis herein, claimant is not ineligible at the first step as claimant is not currently working. 20 CFR 416.920(b). The analysis continues.

The second step of the analysis looks at a two-fold assessment of duration and severity. 20 CFR 416.920(c). This second step is a *de minimus* standard. Ruling any ambiguities in claimant's favor, this Administrative Law Judge (ALJ) finds that claimant meets both. The analysis continues.

The third step of the analysis looks at whether an individual meets or equals one of the Listings of Impairments. 20 CFR 416.920(d). Claimant does not. The analysis continues.

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 96-8.

In considering the claimant's impairments, the great weight of the evidence indicates that the claimant retains the capacity to perform medium work. The claimant's diabetes, asthma, COPD, blood pressure and cholesterol all appear to be under good control through medication. There is no evidence in any of the medical records that the client is receiving any treatment for any issues with his left leg or his right hand or arm. Since the claimant had his coronary surgery in [REDACTED], the claimant's condition has been stable. It is noted that the claimant continues to consume alcohol and smoke cigarettes despite the treating recommendations of his physician. It is also noted that going against these treatment physician's recommendations, would have effects on all of his overall health conditions. The claimant does appear to have some issues with anxiety as noted in the psychological report from [REDACTED]. However, both reports indicate that he is still capable of performing simple and unskilled work, although recommending he limit his contact with the general public.

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.

In this case, this ALJ finds that claimant can return to past relevant work on the basis of the medical evidence. According to the Dictionary of Occupational Titles, an auto mechanic is classified as medium work. The position of an auto mechanic would also limit contact with the general public. Therefore, the claimant would be able to hold employment such as an auto mechanic with his limitations being taken into consideration. Therefore, the claimant is disqualified at step 4 of the analysis.

Claimant has submitted insufficient objective medical evidence that he lacked the residual functional capacity to perform medium work if demanded of him. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant had no residual functional capacity to perform his prior work. Claimant is disqualified from receiving disability at Step 4 based upon the fact that he

has not established by objective medical evidence that he could not perform medium work. Under the Medical-Vocational guidelines, a younger individual, with a high school education or more and a skilled or semi-skilled, non transferrable work history, is not disabled in accordance with Medical Vocational Rule 203.29.

The 6th Circuit has held that subjective complaints are inadequate to establish disability when the objective evidence fails to establish the existence of severity of the alleged pain. *McCormick v Secretary of Health and Human Services*, 861 F2d 998, 1003 (6th cir 1988).

As noted above, claimant has the burden of proof pursuant to 20 CFR 416.912(c). Federal and state law is quite specific with regards to the type of evidence sufficient to show statutory disability. 20 CFR 416.913. This authority requires sufficient medical evidence to substantiate and corroborate statutory disability as it is defined under federal and state law. 20 CFR 416.913(b), .913(d), and .913(e); BEM 260. These medical findings must be corroborated by medical tests, labs, and other corroborating medical evidence that substantiates disability. 20 CFR 416.927, .928. Moreover, complaints and symptoms of pain must be corroborated pursuant to 20 CFR 416.929(a), .929(c)(4), and .945(e). Claimant's medical evidence in this case, taken as a whole, simply does not rise to statutory disability by meeting these federal and state requirements. 20 CFR 416.920; BEM 260, 261.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department's actions were correct.

Accordingly, the department's determination in this matter is **UPHELD**.

/s/

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

Date Signed: _____

Date Mailed: _____

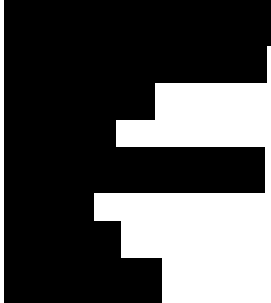
NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

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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 mailing date of the rehearing decision.

SLM/jk

cc:



MAHS