

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2012-59737
Issue No: 2009
Case No: [REDACTED]
Hearing Date: September 19, 2012
Genesee-6 County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, an in person hearing was held on September 19, 2012. Claimant personally appeared and testified. Claimant was represented at hearing by [REDACTED].

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. On November 8, 2011, claimant filed an application for Medical Assistance and Retroactive Medical Assistance benefits alleging disability.
2. On March 9, 2012, the Medical Review Team denied claimant's application stating that claimant's impairments lacked duration.
3. On March 15, 2012, the department caseworker sent claimant notice that his application was denied.
4. On June 12, 2012, claimant filed a request for a hearing to contest the department's negative action.
5. On August 1, 2012, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the medical evidence indicates that the claimant's physical condition was severe at onset but have not persisted for a period of 90 days or greater

and that there is no evidence of severe residual effects. Drug and alcohol abuse (DAA) is present but not material to this application. The claimant is not credible regarding the alcohol abuse as they have informed treating sources that they have abstained since May, 2011 but on admission they acknowledged having consumed a substantial amount of alcohol the day before and noted for a continuous history of at least five beers per day for the past twenty years. DAA is considered not to be material at this time only as there is no medical evidence, i.e. a drug screen, noting continued abuse. The evidence indicates that the claimant would reasonably be limited to the performance of simple and repetitive tasks. The claimant is not currently engaging in substantial gainful activity based on the information that is available in file . The medical evidence of record indicates that the claimant's condition is improving or is expected to improve within 12 months from the date of onset or from the date of surgery. The medical evidence of record indicated that the claimant would retain the ability to perform simple and repetitive tasks. There is no evidence of residual physical limitations. DAA is present but not material to this determination. The claimant's past work was undescribed general labor for temporary agencies determined to be medium exertional and unskilled in nature. Therefore, the claimant retains the capacity to perform their past relevant work. MA-P is denied per 20 CFR 416.920 (e). Retroactive MA-P was considered in this case and is also denied. SDA was not applied for by the claimant, but would have been denied per BEM 261 due to the capacity to perform past relevant work. Listings 1.04, 2.02, 3.00, 4.04, 5.05, 11.14/18 and 12.04/06/08/09 were considered in this determination.

6. The hearing was held on September 19, 2012. At the hearing, claimant waived the time periods and requested to submit additional medical information.
7. Additional medical information was submitted and sent to the State Hearing Review Team on October 29, 2012.
8. On December 6, 2012, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the claimant was admitted in October, 2011 with an acute subdural hematoma with surgical evacuation performed. In March, 2012, he had subtle facial asymmetry evidence of right facial weakness present. There was no sensory deficit. He had slight decrease in power in the left leg with normal tone. Reflexes were 1+ except for the left Patellar reflex, which was 2+. The claimant also has a long history of alcohol abuse/dependence. His mental status showed he had normal stream of thought but racing thoughts at night. His diagnoses included schizoaffective disorder and alcohol dependence in remission. The claimant is not currently engaging in substantial gainful activity based on the information that is available in

file. The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of simple, unskilled, light work. A finding about the capacity for prior work has not been made. However, this information is not material because all potentially applicable medical/vocational guidelines would direct a finding of not disabled given the claimant's age, education and residual functional capacity. Therefore, based on the claimant's vocational profile (closely approaching advanced age at 51, high school education and history of unskilled/semi skilled work), MA-P is denied using Vocational Rule 202.13 as a guide. Retroactive MA-P was considered in this case and is also denied.

9. Claimant is a 51-year-old man whose birth date is [REDACTED]. Claimant is 5'8" tall and weighs 160 pounds. Claimant is a high school graduate and has attended 5 semesters at a junior college and studied culinary arts. Claimant is able to read and write and does have basic math skills.
10. Claimant last worked in 2010 for [REDACTED] [REDACTED] [REDACTED] washing dishes. Claimant also worked as a hospital floor tech cleaning floors.
11. Claimant alleges as disabling impairments: hypertension, shortness of breath, vision problems, back pain, liver disease, intracranial bleeding, depression, anxiety, personality disorder, migraines, memory problems, concentration problems, paranoia and substance abuse.

CONCLUSIONS OF LAW

The regulations governing the hearing and a appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

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

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant is not engaged in substantial gainful activity and is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence on the record indicates that claimant testified on the record that he lives alone in an apartment and he stays at the mission which is paid for by Community Mental Health. Claimant is single with no children under 18 living with him. Claimant has no income and does receive Food Assistance Program benefits. Claimant does not have a driver's license because it was revoked for DUIL and he usually walks or catches the bus 3 times per week. Claimant testified that he does cook 3 times per week like chicken, pork chops and rice and he does grocery shop one time per month with no help. Claimant does mop, do dishes, laundry and makes his bed and he watches television 6 hours per day. Claimant testified that he can stand for 30 minutes at a time, sit for 8 hours at a time and walk ¼ mile. Claimant testified he is able to squat, shower and dress himself, tie his shoes, and sometimes bend at the waist and he cannot touch his toes. Claimant testified that his knees are fine but he has back pain when standing. Claimant testified that his level of pain, on a scale of 1-10, without

medication is a 10, and with medication is a 7. Claimant testified the heaviest weight he can carry is 10 lbs. Claimant testified that he smokes a pack of cigarettes every three days, his doctors have told him to quit and he is not in a smoking cessation program. Claimant testified that he stopped drinking alcohol 2 years ago and that he used to drink a lot. On a typical day he gets up, leaves the mission and goes downtown. Claimant testified that he sleeps three hours at a time and wakes up tired all the time. Claimant testified that he fell and has a closed head injury and he had bleeding on the brain and stitches.

A DHS-49-D form dated September 21, 2012 showed the claimant lives in a shelter and has not had alcohol lately. He is friendly and cooperative. He had normal stream of thought with racing thoughts at night. He has had insomnia and hallucinated for years. Cognition is slowed. His memory is intact (new p 2). Diagnoses included schizoaffective disorder and alcohol dependence in remission (new p 3). The claimant underwent an appendectomy/cystectomy on April 23, 2012. The claimant was seen in the emergency room March 14, 2012 with a migraine. This was a chronic problem. On examination, he had signs of stitches on his head from his previous surgery. His eye, neck, cardiovascular and pulmonary examinations were unremarkable. He did have subtle facial asymmetry evidence of right facial weakness present. There was no sensory deficit. He had slight decrease in power in the left leg with normal tone. Romberg sign was negative. Reflexes were 1+ except for the left Patellar reflex, which was 2+ (records from DDS). A October 15, 2011 record, page 31, indicated claimant was found unconscious on the road, noted for acute subdural hematoma and taken for evaluation. At post surgery he was awake, alert and following commands. He was noted for 20+ history of five plus beers per day, additionally noted for two pack per day habit. Admits to joining six friends and consuming four cases of beer and in determinate amount of liquor day before presentation (p 36). A July 20, 2012 counseling independent evaluation showed claimant had schizoaffective disorder, alcohol dependence in full sustained remission ruling out cognitive disorder and borderline intellectual functioning. Claimant states alcohol free for approximately 18 months and he was capable of simple and repetitive tasks. The mental residual functional capacity assessment on the record indicates the claimant was markedly limited in many areas and only moderately limited in most others. His axis GAF was 50 (p A3-A4).

At Step 2, claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. There is insufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant has reports of pain in multiple areas of his body; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. There are no laboratory or x-ray findings listed in the file which support claimant's contention of 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 pain (symptoms) rather than medical findings. Reported symptoms are an

insufficient basis upon which a finding that claimant has met the evidentiary burden of proof can be made. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

Claimant alleges the following disabling mental impairments: depression, anxiety and personality disorder/schizoaffective disorder.

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 evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. For these reasons, this Administrative Law Judge finds that claimant has failed to meet his burden of proof at Step 2. Claimant must be denied benefits at this step based upon his failure to meet the evidentiary burden.

If claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of claimant's condition does not give rise to a finding that he would meet a statutory listing in the code of federal regulations.

If claimant had not already been denied at Step 2, this Administrative Law Judge would have to deny him again at Step 4 based upon his ability to perform his past relevant work. There is no evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work in which he has engaged in, in the past. Therefore, if claimant had not already been denied at Step 2, he would be denied again at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

Claimant has submitted insufficient objective medical evidence that he lacks the residual functional capacity to perform some other less strenuous tasks than in his prior employment or that he is physically unable to do light or sedentary tasks if demanded of him. Claimant's activities of daily living do not appear to be very limited and he should be able to perform light or sedentary work even with his impairments. Claimant has failed to provide the necessary objective medical evidence to establish that he has a severe impairment or combination of impairments which prevent him from performing any level of work for a period of 12 months. The claimant's testimony as to his limitations indicates that he should be able to perform light or sedentary work.

There is insufficient objective medical/psychiatric evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. Claimant was able to answer all the questions at the hearing and was responsive to the questions. Claimant was oriented to time, person and place during the hearing. Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to claimant's ability to perform work. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity. Claimant is disqualified from receiving disability at Step 5 based upon the fact that he has not established by objective medical evidence that he cannot perform light or sedentary work even with his impairments. Under the Medical-

Vocational guidelines, a person who is closely approaching advanced age (age 51), with a high school education and an unskilled work history who is limited to light work is not considered disabled pursuant to Medical/Vocational Rule 202.13.

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 contained in the file indicate that claimant has a history of tobacco 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 continues to smoke despite the fact that his doctor has told him to quit. Claimant is not in compliance with his treatment program.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial activity without good cause there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

The Department 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.

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

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