

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2013-10145
Issue No: 2009
Case No: [REDACTED]
Hearing Date: February 12, 2013
Genesee-06 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 February 12, 2013. Claimant personally appeared and testified. Claimant was represented at hearing by [REDACTED] of [REDACTED].

ISSUE

Did the Department of Human Services (the department) properly deny claimant's 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 February 22, 2012, claimant filed an application for Medical Assistance, Retroactive Medical Assistance and State Disability Assistance benefits alleging disability.
2. On May 8, 2012, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical Vocational Rule 202.21.
3. On August 2, 2012, the department caseworker sent claimant notice that his application was denied.
4. On October 30, 2012, claimant filed a request for a hearing to contest the department's negative action.
5. On January 11, 2013, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: there is limited relevant medical evidence. However the medical evidence of record could reasonably support the claimant to be limited to light exertional tasks

of a simple and repetitive nature. The claimant is not currently engaging in substantial gainful activity based on the information that is available in file . The claimant's impairments/combination of impairments does not meet/equal the intent or severity of a Social Security Administration listing. The medical evidence of record indicates that the claimant retains the capacity to perform light exertional tasks of a simple and repetitive nature. The claimant's past work was as a self employed recycler, 929.687-022,2M. As such, the claimant would be unable to perform the duties associated with their past work. Likewise, the claimant's past work skills will not transfer to other occupations. Therefore, based on the claimant's vocational profile (49 years old, less than high school education and a history of medium exertional, unskilled self employment), MA-P is denied 20CF R416.920 (e&g), using Vocational Rule 202.20 as a guide. Retroactive MA-P was considered in this determination and is also denied. SDA was not applied for by the claimant but would have been denied per BEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days. Listings 1.04, 4.04, 6.02, 11.02/03/14 and 12.04/06/09 were considered in this determination.

6. The hearing was held on February 12, 2013. 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 February 13, 2013.
8. On April 3, 2013, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the claimant reported significant back pain. X-rays showed only minimal to mild degenerative changes in the cervical, lumbar and thoracic spine. In May, 2012, his extremities were normal. His gait was normal. In October, 2012, the claimant had resolving ear infection. He was not taking his medications as prescribed. He seemed to be concerned about a yeast infection. A letter from the psychological clinic in February, 2012 indicated the claimant's diagnoses included major depressive disorder-chronic-severe, panic disorder with agoraphobia, rule out somatization disorder and personality disorder. There was no objective mental status findings provided. There was no evidence of psychiatric hospitalizations or current mental health treatment. 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, medium 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 50, 15 years of education and history of unskilled work); MA-P is denied using Vocational Rule 203.28 as a guide. Retroactive MA-P was considered in this case and is also denied.

9. Claimant is a 50-year-old man whose birth date is [REDACTED]. Claimant is 5'11.5" tall and weighs 198 pounds. Claimant is a high school graduate and has two years at [REDACTED] where he studied industrial engineering. Claimant is able to read and write but has poor spelling habits and does not have basic math skills.
10. Claimant last worked approximately 6 years before the hearing at a recycling plant where he worked for 16 years before he got sick. Claimant has also worked dry walling houses.
11. Claimant alleges as disabling impairments: hematuria, depression, anxiety, panic attacks, degenerative disc disease, coronary syndrome, seizures, candidiasis, kidney problems, balance problems, falling, overactive adrenal gland, paranoia, hearing voices and a left shoulder injury.

CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

...Medical reports should include –

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

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

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

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;

- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

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

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

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

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

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

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

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to

the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).

4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant is not engaged in substantial gainful activity and has not worked since approximately 2006. Claimant is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence on the record indicates that a letter from the psychological clinic dated February 23, 2012 indicated the claimant's diagnoses included major depressive disorder-chronic-severe, panic disorder with agoraphobia, rule out somatization disorder and personality disorder (A-117). An initial therapy evaluation dated May 9, 2012 showed the claimant had some limitation of motion of the lumbar spine (A-142). Gross motor examination revealed strength was reduced in the hip flexion, knee extension and ankle plantar/flexion and hallux extension (A-143). The claimant presented with severe back pain with symptoms radiating to the leg (A-144). On May 10, 2012 the claimant's extremities were normal and his gait was normal (A-87). X-rays dated August 27, 2012 of the cervical spine showed mild degenerative changes, most pronounced at C3-C4, C4-C5 and C5-C6 (A-119). X-rays of the lumbar spine showed mild degenerative changes of the lumbar spine (A-120). X-rays of the thoracic spine showed minimal degenerative changes of the mild thoracic spine most pronounced at T5-T6 and T6-T7 (A-121). On October 12, 2012, the claimant was not taking medications as prescribed due to the cost and fear of impact on his candidiasis infection. The claimant was 6'1" and 208 lbs with a BMI of 27.496. He reported that his candidiasis infection was resolving but was painful and moved around his body. He complained of crackling and popping in his ear due to candidiasis. He had eye drainage. His heart was regular in rate and rhythm with normal S1 and S2. Lungs were clear to auscultation. He had joint pain and neck/back pain (A-85). Bilateral tympanic membranes were red but left looked like a deflated balloon. Assessment was degenerative disc disease, arthritis, anxiety, bipolar, depression and resolving acute otitis media (A-86). A medical examination report dated December 22, 2009 indicates that claimant had a normal examination. He was 71.5" tall, weighed 217 lbs, blood pressure 122/84, right hand dominant. His visual acuity was 20/25 in the right eye and 20/30 in the left eye. The clinical impression was that he was stable and that he could frequently carry 25 lbs or less and never carry 50 lbs or more. He could stand/walk about 6 hours in an 8 hour workday and he could sit about 6 hours in an 8 hour

workday. He could use both upper extremities for simple grasping, reaching, pushing/pulling, fine manipulating, and operating foot/pedal controls with both feet and legs. He has some limitations in social interactions (A3-A4). This Administrative Law Judge did consider all of the medical reports contained in the file when making this decision.

Claimant testified on the record that he lives alone in a house and his brother and mother support him. Claimant is single with no children under 18 who live with him. Claimant has no income and does receive Food Assistance Program benefits. Claimant does have a driver's license and he drives 1-2 per month but his brother usually takes him because he is scared to drive. Claimant testified that he does cook and he makes mostly sandwiches and he does not do the grocery shopping, cleaning or any outside work. Claimant testified that he watches television one hour per day. Claimant testified that he can stand for 20-30 minutes at a time, sit for 1 hour at a time and can walk 50 ft. Claimant testified he can sometimes squat and recover and he can shower and dress himself and tie his shoes while sitting but cannot bend at waist or touch his toes. Claimant testified that his left knee is cracked and he has pain in his left hip. Claimant testified that he is right handed and that his hands/arms are fine and legs/feet are fine but he does have a left shoulder injury. Claimant testified that the heaviest weight he can carry is a gallon of milk and that he doesn't smoke, drink or do any drugs. Claimant testified that on a typical day he gets up by rolling up on his knees and pulling self up, walks a little, visits with his brother, watches television, sits at table, relaxes on the couch, eats, night comes, sits around, lays down then goes to bed. Claimant testified he is bored and has disjointed thoughts. Claimant's brother testified claimant had good days and bad days but mostly bad and that he pays for everything and that claimant has mood swings and anxiety attacks.

At Step 2, claimant has the burden of proof of establishing that he has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. There is insufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant has reports of pain in multiple areas of his body; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. There are no laboratory or x-ray findings listed in the file 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: hearing voices, bipolar disorder, depression, anxiety, and panic attacks as well as paranoia.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph

(B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers severe mental limitations. There is no mental residual functional capacity assessment in the record. There is insufficient evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. Claimant was oriented to time, person and place during the hearing. Claimant was able to answer all of the questions at the hearing and was responsive to the questions. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. For these reasons, this Administrative Law Judge finds that claimant has failed to meet his burden of proof at Step 2. Claimant must be denied benefits at this step based upon his failure to meet the evidentiary burden.

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

If claimant had not already been denied at Step 2, this Administrative Law Judge would have to deny him again at Step 4 based upon his inability 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 50), with a more than high school education and an unskilled work history who is limited to light work is not considered disabled.

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 for Medical Assistance and retroactive Medical 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.

Accordingly, the department's decision is **AFFIRMED**.

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

Date Signed: April 16, 2013

Date Mailed: April 16, 2013

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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

2013-10145/LYL

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cc:

