

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201312357
Issue No: 2009, 4031
Case No: [REDACTED]
Hearing Date: March 6, 2013
Kent 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, a three-way telephone conference and was held on March 6, 2013. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED] of [REDACTED] and [REDACTED]. The Department was represented by Assistant Attorney General [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 July 26, 2012, claimant filed an application for Medical Assistance and State Disability Assistance and Retroactive Assistance benefits alleging disability.
2. On October 16, 2012, the Medical Review Team denied claimant's application stating that claimant's impairments were non-exertional.
3. On October 23, 2012, the department caseworker sent claimant notice that his application was denied.
4. On November 8, 2012, claimant filed a request for a hearing to contest the department's negative action.

5. On January 14, 2013, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: IQ testing in 2009 was not considered to be a true reflection of his ability being his effort on the testing was only fair. A mental status in September, 2012 indicated the claimant probably functioned in the borderline range of intellect. His speech was clear, organized and spontaneous. However, during the sensorium and mental capacity section, he became belligerent and offered responses he knew were not correct. In July, 2012, he had testicular pain consistent with clinical orchitis but his examination was otherwise unremarkable. The claimant is not currently engaging in substantial gainful activity (SGA) 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 indicated that the claimant retains the capacity to perform a wide range of simple, unskilled 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 (RFC). Therefore, based on the claimant's vocational profile (younger individual, limited education and no relevant work history reported), MA-P is denied using Vocational Rule 204.00 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days.
6. Claimant is a 29-year-old man whose date of birth is [REDACTED]; Claimant is 5'9" tall and weighs 145 pounds. Claimant attended the 9th grade and has no GED. Claimant testified that he has Attention Deficit Hyperactive Disorder, he is a slow learner and he is learning disabled and that he doesn't read and write well but he can add, subtract and count money.
7. Claimant testified that he received SSI until he was locked up in 2005-2009 when he was in prison for attempted to do great bodily harm.
8. Claimant alleges as disabling impairments: Attention Deficit Hyperactive disorder, obsessive compulsive disorder, depression, aggressive and anger issues, voices in his head, comprehension problems authority problems, numbness in his legs and pain in his leg.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who

requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the 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 with his girlfriend in an apartment and that he is single with no children under age 18 and no income. Claimant does receive Food and Assistant Program benefits. Claimant does not have a driver's license because he stated that he cannot read the manual and his girlfriend takes him where he needs to go. Claimant testifies that he does not cook or grocery shop, but he does do dishes and he watches television 12 hours per day or else plays video games all day, and plays football on the video games. Claimant testified he can stand for 30 minutes and he can sit all day. Claimant testified he can walk 1 block and he is able to squat, turn at the waste, shower and dress himself, tie his shoes and touch his toes, his knees and back are fine. Claimant testified his level of pain on a scale from 1-10 without medication is 7 and with medication is 0 and he takes over the counter medication. Claimant testified that he is left handed and his hands and arms are fine and his right leg burns and that he needs to move it. Claimant testified that the heaviest weight he can carry is 100 pounds and that he doesn't smoke, drink or take any drugs. Claimant testified that on a typical day he watches television or plays video games or plays with the kids. Claimant testified he doesn't take any medication.

Psychological testing dated May 8, 2009 showed the claimant's verbal IQ was 60, performance IQ was 59 and a full scale IQ was 56, however his effort on the testing seemed only fair. Consequently the results obtained are considered a mild under reflection of his true ability. (Pg 26).

The patient was seen in emergency July 24, 2012 with testicular pain. (Pg 45). His examination was otherwise unremarkable. His impression was bilateral testicular pain consistent with clinical orchitis. (Pg 46).

A mental status examination dated September 22, 2012 shows the claimant was not taking any medications. He denied any inpatient psychiatric treatment (Pg 16). The claimant was driven to the appointment by his girlfriend (pg 17). His speech was clear, organized and spontaneous. He was able to focus and concentrate. However during the Sensorium and Mental Capacity Section he became belligerent and offered responses he knew were not correct. There were many inconsistencies in his history from previous reports. He described his mood as "Rocky". (Pg 18). Diagnosis includes history of alcohol abuse, cannabis dependence in remission per claimant history, antisocial personality disorder and possible borderline level of intellectual functioning (Pg. 19). Claimant was given Axis V GAF of 48 and he had no diagnosis in Axis I, in Axis II he

had mild cognitively-impaired range intellectual functioning. His prognosis was poor, his emotion functioning seems to be reasonably stable. He had some limitations in his cognitive functioning as well as limitations in his academic skills, would be a significant impediment to him being able to be successful in a competitive work environment. He would not be able to manage his own benefit fund. (Pg. 25).

On September 23, 2012, claimant's Axis I GAF was 55-60. His prognosis was fair. He was able to understand, retain and follow through on simple instructions. There was no reason to restrict him from performing simple routine, repetitive tasks in a structured environment pending any physical restrictions imposed by his treating physician. (Pg. 20).

This Administrative Law Judge did consider all 130 plus pages of medical reports that came in the file when making this decision.

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: Mental retardation, attention deficit hyperactive disorder, authority problems, comprehension problems, and voices in his head, as well as meeting Listing 12.05 mental retardation.

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 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 younger individual (age 29), with less than a high school education and a history of less than gainful employment is not considered disabled. Claimant does not meet Listing 12.05 which indicates significantly sub-average general intellectual functioning with deficits in adaptive functioning initially manifested during the developmental period. Claimant does not have mental incapacity absence dependence upon others for personal needs and nor does he have the inability to follow directions such as that use of standardized measures of intellectual functioning as precluded. He did not have a valid verbal performance or full scale IQ of 59 or less and he did not have a valid verbal performance or full scale IQ of 60-70 and a physical or other mental impairment imposing an additional insignificant work related limitation of function. Claimant has no marked restrictions of activity of daily living. Claimant had no marked difficulties in maintaining social functioning as he does have a girlfriend. Claimant did not display marked difficulties in maintaining concentration persistence in pace, he watches television all day and he does have the ability to play video games all day. There is no evidence in the record of repeated episodes of decompensation.

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the

Claimant 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

LYL/cr

cc:

