

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2013-15234
Issue No: 2009
[REDACTED]
Hearing Date: February 27, 2013
Ingham 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 27, 2013. Claimant personally appeared and testified. Claimant was represented at hearing by [REDACTED]. The department was represented at the hearing by Lead Worker, [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 February 6, 2012, claimant filed an application for Medical Assistance and Retroactive Medical Assistance benefits alleging disability.
2. On August 31, 2012, the Medical Review Team denied claimant's application stating that claimant could perform other work.
3. On September 7, 2012, the department caseworker sent claimant notice that his application was denied.
4. On December 5, 2012, claimant filed a request for a hearing to contest the department's negative action.
5. On January 22, 2013, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: in May, 2012, the claimant's lungs were clear

without any adventitious sounds. His abdominal examination was unremarkable. Strength was 5/5 throughout. Reflexes were symmetrical at 2/4. Sensory examination was normal. He did not appear to have any atrophy of muscles in his hands or lower extremities. He had full grip and full digital dexterity in both hands. All his extremities were well perfused and vascularly intact. He had normal gait. His lower extremities did not have signs of DVT. There appeared to be a slight thickening of the left calf compared to the right. He had very superficial varicosities. He had diffuse mild paraspinal tenderness with decreased range of motion of the lumbosacral spine. He reported episodic right sciatic pain. He had a Greenfield filter implanted and is on Coumadin. A mental status in June, 2012, showed the claimant had a history of alcohol abuse. He was cooperative, verbal and engaging in the assessment process. His grooming and hygiene were fair. He was logical and organized in response to questions. He denied hallucinations or delusions. He reported depression, anxiety and anger. Diagnosis was major depression, recurrent, moderate. 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, limited education and history of unskilled work), MA-P is denied using Vocational Rule 202.10 as a guide. Retroactive MA-P was considered in this case and is also denied.

6. The hearing was held on February 27, 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 28, 2013.
8. On May 10, 2013, the State Hearing Review Team again denied claimant's application stating in its analysis and recommended decision: the claimant was hospitalized due to syncopal episodes. He was found to have an elevated alcohol level. His labs showed INR level were subtherapeutic. His blood pressure was controlled. There was no evidence of liver damage. Motor strength throughout was normal. Sensation was intact. The head CAT was normal. As a result of the claimant combination of severe physical condition, he

is restricted to performing light unskilled work. He retains the capacity to lift up to 20 lbs occasionally, 10 lbs frequently and stand and walk for up to 6 of 8 hours. Claimant is not engaging in substantial gainful activity at this time. Claimant's severe impairments do not meet or equal any listing. Despite the impairments, he retains the capacity to perform light unskilled work. Therefore, based on the claimant's vocational profile (claimant approaching advance age, 11th grade education, and light work history); MA-P is denied using Vocational Rule 202.18 as a guide. Retroactive MA-P benefits are denied at step 5 of the sequential evaluation; claimant retains the capacity to perform light unskilled work.

9. Claimant is a 52-year-old man whose birth date is [REDACTED]. Claimant is 5'9" tall and weighs 180 pounds. Claimant attended the 10th grade. Claimant is able to read and write with some comprehension problems and can add/subtract and count money.
10. Claimant last worked in 2005 as a mason/bricklayer where he worked for 30 years. Claimant has also worked as a supply clerk at a phone company and at a golf course watering grass at night.
11. Claimant alleges as disabling impairments: blood clots, hypertension, liver problems, deep venous thrombosis, degenerative joint disease, back pain, pulmonary embolism, and arthritis in the hands, poor balance, headaches, psoriatic arthritis, short term memory problems, depression and anger.

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 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 niece, in an apartment and she pays the rent. Claimant is single with no children under 18 who live with her. Claimant has no income and does receive Food Assistance Program benefits and the Ingham Health Plan. Claimant testified that he doesn't have a driver's license and he takes the bus or gets rides. Claimant testified that his niece or sister cook for him. Claimant testified that he does grocery shop anytime he can get a ride because he is homeless and that he does sweep the floor as a chore. Claimant testified that he watches television a lot. Claimant testified that he can

stand for 15 minutes at a time, sit for 1 hour at a time and can walk 100 yards. Claimant is able to squat, bend at the waist, shower and dress himself and tie his shoes, but he cannot touch his toes. Claimant testified that his back hurts because he has arthritis and his level of pain, on a scale of 1-10, without medication is a 10, and with medication is a 7. Claimant testified that he is right handed, that he has arthritis in his hands/arms and deep vein thrombosis and blood clots in his legs/feet. Claimant testified that the heaviest weight he can carry is 5 lbs and that he does smoke 5-7 cigarettes a day, his doctors have told him to quit and he is not in a smoking cessation program.

The claimant was hospitalized on January 7, 2013 due to syncopal episodes. His alcohol level was elevated at admission. Labs showed his international normalized ration level was subtherapeutic. He was medically treated and released in stable condition (p 1-2). The physical examination reported his blood pressure was 119/73. The abdomen area was nondistended or no tenderness. His motor strength was normal throughout. He had intact sensation. The head CAT scan shows no acute intracranial abnormality (p 8). On May 28, 2012, the claimant's lungs were clear without any adventitious sounds. His abdominal examination was unremarkable (p 13). Manual muscle testing revealed strength at 5/5 throughout. Reflexes were symmetrical at 2/4. Sensory examination was normal. He did not appear to have any atrophy of muscles in his hands or lower extremities. He had full grip and full digital dexterity in both hands. All his extremities were well perfused and vasculally intact. There were no circulatory deficits (p 14). He was able to ambulate without the use of any assistive devices. He had normal gait. He had no respiratory distress and did not appear tachypneic or short of breath. His lower extremities did not have signs of acute deep vein thrombosis (p 15-16). The claimant reported he was a bricklayer for more than 30 years (p 3). In May, 2012, the claimant was 71" and 186 lbs. He had an upper plate and upper teeth were edentulous. He had a few remaining lower teeth that had significant dental caries. His chest was clear with no rales, wheezes, rhonchi or accessory muscles of respiration. He had mildly decreased breath sounds bilaterally (p 4). Distal extremities had good pulses. There appeared to be a slight thickening of the left calf compared to the right. He had very superficial varicosities. He had a negative Homans and negative Pratt. He had normal range of motion of the neck, shoulders, hands, wrists, knees, ankles and feet. He had diffuse mild paraspinal tenderness with decreased range of motion of the lumbosacral spine. It did not appear necessary for him to use an assistive ambulatory device. Deep tendon reflexes were 2+ symmetrical. He reported episodic right sciatica. Straight leg raise was negative. The claimant had had a Greenfield filter implanted and is on Coumadin (p 5). A mental status evaluation dated June 19, 2012 showed the claimant had a history of alcohol abuse (p 7). The claimant took the bus to the evaluation. He came alone and was early. His gait was very slow, his posture was bent over, and he was very stiff. He was cooperative, verbal and engaged in the assessment process. His grooming and hygiene were fair. He was logical and organized in response to questions. He denied hallucinations or delusions. He reported depression, anxiety and anger (p 8). Diagnosis was major depression, recurrent, moderate (p 9).

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: depression, anxiety and anger.

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 person closely approaching advanced age (age 53), with a less than high school education and an unskilled work history who is limited to light work is not considered disabled pursuant to Medical Vocational Rule 202.18.

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 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.

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/las

cc:

