

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201317087
Issue No: 2009; 4031
Case No: [REDACTED]
Hearing Date: March 27, 2013
Newaygo 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 telephone hearing was held on Wednesday, March 27, 2013. Claimant personally appeared and testified. The department was represented at the hearing by Eligibility Specialist, [REDACTED] and Lead Eligibility Specialist, [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 September 10, 2012, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
2. On November 15, 2012, the Medical Review Team denied claimant's application stating that claimant's impairments were non-severe.
3. On November 20, 2012, the department caseworker sent claimant notice that his application was denied.
4. On December 12, 2012, claimant filed a request for a hearing to contest the department's negative action.
5. On January 29, 2013, the State Hearing Review Team again denied claimant's application stating that claimant has a history of seizures. In March, 2012, he was admitted due to recurrent seizures. His medications were changed. His EEG was within normal limits. There was a question of

whether he could have pseudo seizures. In September, 2012, the claimant reported he sometimes misses doses of his medication. His Dilantin level was extremely low. It is expected that his seizures would be better controlled with compliance to prescribed treatment.

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 indicates that with prescribed treatment, the Claimant retains the capacity to perform jobs that do not require working around hazards such as unprotected heights and dangerous moving machinery.

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 that claimant's age, education, and residual functional capacity (RFC).

Therefore, based on the Claimant's vocational profile (younger individual, high school education and history of unskilled/semiskilled work), MA-P is denied using Vocational Rule 203.28 as a guide. Retrospective 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. The hearing was held on March 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 April 8, 2013.
8. On June 20, 2013, the State Hearing Review Team again denied claimant's application stating that:

The medical evidence of record documents that the Claimant does have a history of seizures; however, the Claimant likewise has a documented history of medication non-compliance and subsequent seizure activity. If the Claimant were compliant with required medication treatment, it is reasonable that they would retain the ability to perform medium exertion tasks that avoid the use of ropes, ladders, scaffolding, and more than

concentrated exposure to unprotected heights, dangerous machinery, and pulmonary irritants.

BEM 260, 20CFR416.930, 20CFR416.936 are cited due to evidence supporting the Claimant non-compliance for correctable or treatable impairments.

If Claimant was treatment compliant, then the following would apply:

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 (SSA) listing.

The medical evidence of record indicates that the Claimant retains the capacity to perform medium exertional tasks that avoid the use of ropes, ladders, scaffolding, and more than concentrated exposure to unprotected heights, dangerous machinery, and pulmonary irritants.

The Claimant has a history of less than gainful employment. As such, there is no past work for the Claimant to perform, nor are there past work skills to transfer to other occupations.

Therefore, based on the Claimant's vocational profile (22 years old, at least a high school education, and a history of less than gainful employment), MA-P is denied, 20CFR416.920 (e&g), using Vocational Rule 203.28 as a guide. Retroactive MA-P was considered in this determination and is also denied. SDA is 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, 3.03, and 11.02/03/14 were considered in this determination.

9. Claimant is a 22-year-old man whose birth date is [REDACTED]. Claimant is 5'11" tall and 155 weighs pounds. Claimant is a high school graduate. Claimant is able to read and write and does have basic math skills.
10. Claimant last worked in March, 2012 as a deli worker. Claimant has also worked as a gas station assistance manager and in a factory.
11. Claimant alleges as disabling impairments: Epilepsy and asthma. He has a seizure about every two weeks.

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 lives with a girlfriend in a house, is single, with no children under 18, and no income. Claimant does receive Food Assistance Program Benefits. Claimant does not have a driver's license because of his seizures and his girlfriend takes him where he needs to go. Claimant does cook one time per week and cooks things like chicken and he does grocery shop two times per month with no help. Claimant does clean the bedroom, do laundry and dishes and his hobby is running which he does twice a week for two miles. Claimant watches television for five hours per day and uses the computer for one hour per day. Claimant testified that he can stand and sit with no limits and he can walk two miles. He is able to squat, bend at the waist, shower and dress himself, tie his shoes and touch his toes and his back and knees are fine. He has no pain. He is right handed. His hands and arms are fine, his legs and feet are fine, and the heaviest weight he carries is 75 pounds. He does smoke a half pack of cigarettes per day. Claimant has said that he is supposed to take Depacote and Dilantin but he has not been taking those since July, 2012 and that in a typical day he takes a shower, picks up his room, and watches television.

The Claimant was admitted March 24, 2012 to March 29, 2012 with recurrent seizures. It was recommended to change his antiepileptic drugs. There was a question of whether this could be pseudo seizures. EEG was within normal limits (p. 26).

On September 18, 2012, the Claimant was seen with a history of seizure disorder. His anticonvulsant levels were not therapeutic. He admitted that he sometimes misses doses, about 3 a month. However, his Dilantin level was extremely low at 2.2. He was unsure of his dosages of his medications and did not bring in the medications. He reported one alcoholic drink per week (p. 10). His examination was unremarkable. Possible roadblocks to his success included noncompliance. His medications were increased and he was to have the level checked again in 2 weeks (p. 11).

A February 25, 2013 physician report indicates Claimant's blood pressure was 121/66, pulse 60, respiratory rate 16, pulse oximetry is 97% on room air, temperature 37.3. Resting in the bed, appears nontoxic, in no acute distress. HEENT: Head is atraumatic, normocephalic. Extraocular movements are intact. Pupils are equal, round, and

reactive. Neck is supple. Cardiac is Normal S1 and S2, regular rate and rhythm. Respiratory lungs are clear. Abdomen is soft and not distended. Minimal tenderness at the incision site. Bandage is clean, dry, and intact. No rebound, tenderness, rigidity, or guarding. No masses palpated. Musculoskeletal no deformities. No swelling. Skin has normal turgor. Neurologically awake, alert, answering questions appropriately. Cranial nerves 2, 3, 4, 5, 6, 7, 11, and 12 are intact and equal bilaterally. Strength is 5/5 in bilateral upper and lower extremities. Normal finger to nose.

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 or would be stable with compliance to his medication. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a debilitating 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.

He had a seizure but was back to normal mental status and he has a mild headache but no postictal confusion. (pg. 97). He was counseled to resume his regularly scheduled dose of Dilantin of 100mg three times daily and he should continue his home dose of Depakote of 500mg three times daily. He was advised not to drive. He was diagnosed with breakthrough seizures and medication noncompliance. (pg. 98).

Claimant alleges no disabling mental impairments.

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 (22), with a high school education and an unskilled work history who is limited to light work is not considered disabled.

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.

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'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 does not meet the disability criteria for State Disability Assistance benefits either

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 and/or State Disability Assistance.

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

LYL/hj

cc:

