#### STATE OF MICHIGAN STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES ADMINISTRATIVE HEARINGS FOR THE DEPARTMENT OF HUMAN SERVICES

#### IN THE MATTER OF:



Reg. No: 2013-17370 Issue No: 2009; 4031 Case No: Hearing Date: April 3, 2013 County DHS (Cheboygan)

#### ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

## HEARING DECISION

This matter is before the undersigned Admini strative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notic e, a telephone hearing was held on April 3, 2013. Claim ant did not appear . Authorized Hearing s Representative, Claimant's mother **app** eared on his behalf. The department was represented by Eligibility Specialist

## <u>ISSUE</u>

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P), retroactive Medical Assistance (retro 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 May 9, 2012, claim ant filed an applic ation for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On November 27, 2012, the Medi cal Rev iew Team denied claimant's application stating that claimant's impairments were non-severe.
- (3) On December 3, 2012, the department caseworker sent claimant notice that his application was denied.
- (4) On December 10, 2012, claimant f iled a request for a hearing to contest the department's negative action.
- (5) On February 12, 2013, the State Hearing Review Team again denie d claimant's application stating that the medical evidence of record indicates that the claimant reasonably retains the ability to perform light exertion al tasks. Drug and alc ohol abus e is present but not material to the

determination. The evidence does not support the presence of a severe psychiatric impairment. The claimant should avoid work that would expose them to more than concentrate levels of loud noises. The claimant is not currently engaging in subst antial gainful activity based on the information clai mant's impairments/combination of is availab le in the file. The impairments does not meet or equal the intent or severity of a Social Security administration listing. The m edical evidence of record i ndicates that the claimant retains the capacity to perform light exertional tasks that avoid mor e than concentrated exposure to loud noises. The evidence does not s upport the presence of a se vere psychiatric impairment. Drug and alcohol abuse is present but the evidence does not support that it is material to this determination. T herefore based on the c laimant's vocational profile of 50 years old at least a high school education and a history of heavy exer tional unskilled employment MA-P is denied per 20 CFR 416.920 (e&g) using v ocational rule 202.13 as a guide. Ret roactive MA-P was considered in this determination and is also denied. SDA is denied per BEM 261 because t he nature and severity of the claimant's impairments would not preclude work acti vity at the above-stated level for 90 days.

- (6) The hearing was held on April 3, 2013. At the hearing, claimant waived the time periods and requested to submit additional medical information.
- (7) No new information was submitted by July 23, 2013. The record was closed and this Administrative La w judge makes the decision based upon the records contained in the file.
- (8) Claimant is a 50-year-old man whose birth date is **1999**. Claimant is 5'8" tall and 175 weighs pounds.
- (9) Claimant alleges as disabling im pairments: Obstructive sleep Apnea, Psoriatic arthritis, depression, pain ful hands, back, knees, hear ing loss, digestive problems.

# 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 oppor tunity for a hearing shall be granted to an ap plicant who requests a hearing because his or her clai m for assistance has been denied. MAC R 400.903(1). Clients h ave the right to contes t a department decision affecting elig ibility or benefit levels whenev er it is believed that the decis ion is incorrect. The department will provide an adm inistrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

The State Disability A ssistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Service s (DHS or department) admin isters the SDA program pursuant to MCL 400.10, *et seq.*,

and MAC R 400.3151-400.3180. Department polic ies are found in the Bridges Administrative Manua I (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

The Medical Assistance (MA) program is estab lished by Title XIX of the Social Sec urity Act and is implemented by T itle 42 of the C ode 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 substant ial 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 deter mine disability . Current work activity, severity of impairments, residual functional capacity, past wor k, 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 experienc e. 20 CFR 416.920(c).

If the impairment or combination of impair ments do not signific antly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disab ility does not exist. Age, education and work ex perience will not be c onsidered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings wh ich demonstrate a medical im pairment.... 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 press ure, X-rays);

Diagnosis (statement of disease or injury based on it s 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 bas ic work activities is evaluated. If an individual has the ability to perform basic work activities with out 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 a cceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an indiv idual can do des pite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidenc e relevant to the claim, including m edical opinions, is rev iewed and findings are made. 20 CFR 416.927(c).

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

A statement by a medical s ource finding t hat an individual is "d isabled" or "unable to work" does not mean that disability e xists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that s everal considerations be analyzed in s equential order. If disability can be r uled out at any step, analys is of the next step is <u>not</u> required. These steps are:

- 1. Does the client perf orm S ubstantial 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 cli ent is ineligible for MA. If yes, the analysis c ontinues to Step 3. 20 CF R 416.920(c).
- 3. Does the impairment appear on a spec ial listing of impairments or are the client's s ymptoms, signs, and laboratory findings at least eq uivalent in s everity to the set of medical findings specified for the listed impairment? If no, the analys is 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).
- Does the client have the Residual Functional Capacity (RFC) to perform other work according to t he 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 subs tantial gainful activity. Claim ant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indic ates an University of Michigan hospital note of January 25, 2012 at page 371 indicates the claimant smokes marijuana and stated that it helped with poor appetite, nausea and vomiting post meals. He had normal liver enzymes. He admitted to not being fully medication compliant. An order Michigan regional Hospital note dated April 18, 2012 at page 344 indicates a colonoscopy he had internal non-bleeding hemorrhoids but otherwise normal findings. In October 6, 2012 Michigan medical consultants independent examination indicated that claimant was noted for scatters psorial tic plaques covering approximately 5% total

skin area, normal musculoskeletal and neurologi cal examinations and decr ease flexing on right knee only two 130°. A medical examination report dated July 25, 2012 indicates the claimant is 5'8" tall await hundred and 75 pounds his BMI was 26.6 blood pressure was 130/100 pulse 100 bpm rest way ra te 12 bpm he was well developed wellnourished in no apparent distre ss. He was well groomed. His psychiatric evaluation indicated that he was alert and oriented times three; his m ood and affect were appropriate. The musculoskele tal area: his gait was antalgic and slowed; he had decreased range of motion the neck decreased range of motion of the bilateral shoulder flexion; decreased range of motion with bilate ral elbow extension; he had psoriasis on the skin. A December a Sept ember 25, 2012 medical examinat ion report indicates the claimant has several IV tra ck marks his vital signs were : pulse 69; blood pressur e 104/64; weight 179 pounds. In the musculo skeletal system h e had no significant swelling or tendernes s appreciated on examination in the smaller joints of the hands. The wrists looked, felt and moved normally the elbows had localized tenderness to the lateral epicondyles bilaterally. No joint e ffusion. Normal movement. The shoulders had normal range of moti on; normal movements; there was normal axial spine curvature. The knees had no effusion. Ther e was localized tenderness of the knee joint area bilaterally. No crepitus. The ankles looked and moved normally. This administrative law judge did consider the entire written record when making this determination.

burden of proof of establis hing that he has a severely At Step 2, claimant has the 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. in multiple areas of his Claimant has reports of pain body; however, there are no corresponding clinic al findings that suppor t the reports of symptoms and limitations made by the claimant. There are no labor atory or x-ray findings listed in the file. 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 r eports of pain (sympt oms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that claimant has met the evidentiary burden of pr oof can be made. This Administrative Law Judge finds that the medical record is insu fficient to establish that claim ant has a severely restrictive physical impairment.

Claimant alleges the following disabling mental impairments: depression.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations ar e assessed using the criteria in paragraph (B) of the listings for mental di sorders (descriptions of restrict ions of activities of daily living, social functioning; c oncentration, persistence, or pace; and ability to tolerat e increased mental demands associated wit h com petitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

There is insufficient objective medical/ps ychiatric e vidence in the record indicating claimant s uffers severe mental limitations . There is no ment al residual functional capacity assessment in the record. There is in sufficient evidence contained in the file of

depression or a cognitive dysfunction that is from working at any job. The evidentiary re suffers a severely restrictive mental impair ment. 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 evidenc e 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 be en denied at Step 2, this Administrative Law Judge would have to deny him again at Step 4 based upon hi s ability to perform his past relevant work. There is no ev idence upon which this Admin istrative Law Judge c ould 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 capac ity is what an individual can do desp ite 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 class ify 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 t han 10 pounds at a time and occasionally lifting or carrying articles lik e docket files, ledgers, and small tools. Although a sedentary job is defined as one whic h 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 wor k 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 objecti ve 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 pr ovide the necessary objective m edical evidence to establish that he has a severe impairment or combination of im pairments which prevent him from performing any level of work for a period of 12 mont hs. 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/ps ychiatric 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 establis h that claimant has no residual functional capacity. Claimant is dis qualified from receiving disability at Step 5 based upon the fact that he has not establis hed by objective medical evidence that he cannot perform light or sedentary work even with his impairments. Under the Medical-Vocational guide lines, a fifty year old, with a high sch ool education and an unskille d work history who is limited to light work is not considered disabled.

The Federal Regulations at 20 CFR 404.1535 speak to the determination of whethe r Drug Addiction and Alcoholism (D AA) is material to a person's disability and when benefits will or will not be a pproved. 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 material ality of DAA to a person's disability.

When the record contains ev idence of DAA, a determination m ust be made whether or not the per son 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 information indicates t hat claimant has a history of dr ug, and alcohol abuse. Applicable hearing is t he 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 alcoholis m is a c ontributing f actor material to the determination of disability. After a carefu I review of the credible and s ubstantial evidence on the whole record, this Administra tive Law Judge finds that claimant doe s not meet the statutory disabi lity definition under the authori ty of the DA&A Legis lation because his substance abuse is material disability.

to his alleged impairment and alleged

If an individual fails to follow prescribed tr eatment which would be expect ed to restor e their ability to engage in s ubstantial activity without good cause there will not b e a finding of disability.... 20 CFR 416.994(b)(4)(iv).

The department's Program Elig ibility Manual contains the following policy s tatements and instructions for casework ers regarding the State Disability Assistance program: to receive State Disability Assist ance, a person must be dis abled, caring for a disable d person or age 65 or older. BEM , Item 261, p. 1. Because the clai mant does not meet the definition of disabled u nder the MA-P program and becaus e the evidence of record does not establish that claimant is unable t o work for a period exceeding 90 days, the claimant does not meet the disability criteria for Stat e 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 Medi cal As sistance and/or State Disability Assistance.

## **DECISION AND ORDER**

The Administrative Law Judge, based upon t he above findings of fact and conclusion s of law, decides that the depar tment has appropriately estab lished on the record that i t was acting in compliance wit h department policy when it deni ed claimant's application for Medical Assistance, retroactive Medica I Assistance and Stat e Disability Assistance benefits. The claimant should be able to perform a wide range of light or sedentary work even with his impairments. The department policy ent has established its case by a preponderance of the evidence.

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

Landis

/s/

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

Date Signed: July 24, 2013

Date Mailed: July 24, 2013

**NOTICE**: Administrative Hearings may or der a rehearing or reconsideration on either its own motion or at t he request of a party wit hin 30 days of the ma iling date of this Decision and Order. Administrative Hear ings will not orde r a rehearing or reconsideration on the Department's mo tion where the final decis ion 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 <u>MAY</u> be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration <u>MAY</u> be granted for any of the following reasons:
  - misapplication of manual policy or law in the hearing decision,
  - typographical errors, mathematical erro r, 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

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