

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

IN THE MATTER OF:



Reg. No: 2013-12127
Issue No: 2009;4031
Case No: [REDACTED]
Hearing Date: February 28, 2013
Grand Traverse 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 February 28, 2013. Claimant personally appeared and testified.

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 August 30, 2012, claimant filed an application for Medical Assistance, Retroactive Medical Assistance and State Disability Assistance benefits alleging disability.
2. On October 30, 2012, the Medical Review Team denied claimant's application stating that claimant could perform prior relevant work.
3. On November 7, 2012, the department caseworker sent claimant notice that his application was denied.
4. On November 13, 2012, claimant filed a request for a hearing to contest the department's negative action.
5. On January 18, 2013, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the medical evidence of record does not document a mental/physical impairment(s) that significantly limits the claimant's ability to perform basic work activities. The claimant is not currently engaging in substantial gainful activity based on the information that is available in file. The

medical evidence of record does not document a mental/physical impairment(s) that significantly limits the claimant's ability to perform basic work activities. Therefore, MA-P is denied per 20CFR416.920 (c). Retroactive MA-P was considered in this case and is also denied. SDA is denied per BEM 261 due to lack of severity. Listings 1.02, 9.00.B5, 11.14 and 12.04 were considered in this determination.

6. Claimant is a 21-year-old man whose birth date is [REDACTED]. Claimant is 5'9" tall and weighs 127 pounds. Claimant attended the 11th grade and does not have a GED. Claimant is able to read and write and does have basic math skills.
7. Claimant last worked June, 2012 for [REDACTED] [REDACTED] as a fry cook for one month.
8. Claimant alleges as disabling impairments: type I diabetes mellitus, arthritis, neuropathy, depression, attention deficit hyperactive disorder, and restless leg syndrome.

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 father and grandmother in a house and he is single with no children under 18 who live with him. Claimant has no income and does receive Food Assistance Program benefits. Claimant has never had a driver's license and his father takes him where he needs to go. Claimant testified that he does cook one to two times a day and cooks things like boxed foods and he does grocery shop 6-7 times per month with no help needed. Claimant testified that he does vacuum, sweep, does dishes and laundry and he used to play sports but he can't anymore and he watches television 4-5 hours per day and uses the library computer and sometimes plays video games. Claimant testified he will shovel snow if he is feeling up to it. Claimant testified he can stand for 15 minutes at a time, sit for no limit and can walk 15 minutes. Claimant testified he can squat, bend at waist, shower and dress himself, tie his shoes but not touch his toes. Claimant testified his back is fine but he has arthritis in his knees. Claimant testified his level of pain, on a scale of 1-10, without medication is an 8-9, and with medication is a 2-3. Claimant testified he is left handed, he has tingling in his hands/arms, especially his left hand, and he has neuropathy in his legs/feet. Claimant testified the heaviest weight he can carry is 50 lbs about 2 ft, but he can carry 35 lbs repetitively. Claimant testified he quit smoking a week before the hearing and that he stopped smoking marijuana about 6 months to a year before the hearing and he stopped drinking because his doctor told him to quit, but he does drink one time per month.

Claimant testified that on a typical day he sits around and helps his dad, does dishes, cleans or shovels and that he was hospitalized in August, 2012 for 3 days because of his diabetes mellitus because he ran out of insulin. Claimant testified that when he is on his insulin, he feels much better, but he hasn't been to the doctor since he turned 21 and he no longer has insurance and cannot afford to buy his insulin. Claimant testified he might be able to work at a sitting job, but not on his feet if he is properly medicated.

A medical examination report dated June 28, 2012 indicates that claimant has long standing type I diabetes. Onset of diabetes was acute and occurred at age 9. He is currently taking 36 units of length his daily insulin and he is not following up with his endocrinologists. His last visit was more than one year ago. No hypoglycemic symptoms in recent months (p 10). His weight was 118 lbs, height 70", body surface area 1.63 m², body mass index, 17.01, pulse 78, respiration 14, blood pressure 104/70. He was alert and cooperative and in no acute distress. He was oriented times three and his gait was normal. His HEENT was normal. His nose was normal. He had caries and teeth missing and dentition was in poor repair. The neck was supple. The chest and lung exam revealed quiet, even and easy respiratory effort with no use of accessory muscles. Cardiovascular examination revealed normal heart sounds, regular rate and rhythm with no murmurs. No carotid bruits. Palpation and percussion of the abdomen revealed no palpable abdominal masses. No hepatomegaly. No splenomegaly. Auscultation of the abdomen revealed normal bowel sounds. He had no edema in the lower extremities. He had mild tenderness in the lymphatic area with shotty nodes. The examination indicated he had type I diabetes with a history of poor compliance with treatment. He was advised to contact his endocrinologist promptly for follow-up. Change of antibiotics to alter coverage for resistant sinus pathogens also to address the chronic folliculitis/dermatitis in the pubic area. He was counseled to stop smoking. His BMI was less than 25, he was advised to continue exercising and maintaining weight (p 11-12). A July 11, 2012 medical examination report indicates claimant has restless leg syndrome. He has neuropathic leg symptoms. He describes latent pain along with restless leg symptoms. He has had prior assessment and treatment. He did not respond well to gabapentin or Lyrica (p 13). He was assessed with diabetes mellitus, uncomplicated type I (250.01) and he was recommended to follow-up an appointment for reassessments. He was also treated for restless leg syndrome and diabetic neuropathy (p 15). An August 8, 2012 medical examination report indicates claimant weighed 125 lbs, height 70", body surface area 1.68 m², BMI 18.01, pulse 78, respiration 14, and blood pressure 118/70 (p 18).

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 or can result in death. There is sufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant does have type I diabetes. Type I diabetes mellitus always requires life long insulin. Insulin dependent diabetes mellitus is an absolute deficiency of insulin production that commonly begins in childhood and continues throughout adulthood. Some persons do not achieve good control for a variety of reasons including, but not limited to, hypoglycemia, unawareness, other disorders that can affect blood glucose levels, inability to manage diabetes mellitus due to mental disorder or inadequate treatment. Listing 9.00.B5.

Claimant alleges the following disabling mental impairments: depression and attention deficit hyperactive disorder.

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

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. 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 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/las

cc:

