

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2013-15241
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 the hearing by [REDACTED] Claimant's mother, [REDACTED] also appeared and testified. The department was represented at the hearing by Lead Worker, [REDACTED] [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 May 4, 2012, claimant filed an application for Medical Assistance and Retroactive Medical Assistance benefits alleging disability. Claimant filed a second Medical Assistance application on November 29, 2012 which will be consolidated herein.
2. On September 7, 2012, the Medical Review Team denied claimant's application stating that claimant's impairments lacked duration.
3. On September 17, 2012, the department caseworker sent claimant notice that his application was denied.
4. On December 4, 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 in its analysis and recommended decision: per 20CFR 416.909, the claimant's condition is not expected to last for a continuous period of 12 months; or, the claimant's impairment is expected to improve. 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 past work in customer service. Therefore, based on the claimant's vocational profile (younger individual, 15 years of education, and light work history); MA-P is denied using Vocational Rule 202.21 as a guide. Retroactive MA-P benefits are denied at step 5 of the sequential evaluation; claimant retains the capacity to perform past work in customer service.
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 medically treated for magnesium and potassium deficiency with improvement in condition. His blood pressure was controlled. Lungs were clear. There's no sign of liver damage. The labs were within normal limits. As a result of the claimant's combination of severe physical condition, he is restricted to performing light 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 work. Therefore, based on the claimant's vocational profile (younger individual, 15 years of education, and light work history); MA-P is denied using Vocational rule 202.21 as a guide. Retroactive MA-P benefits are denied at step 5 of the sequential evaluation; claimant retains the capacity to perform light work.
9. Claimant is a 48-year-old man whose birth date is [REDACTED]. Claimant is 6'2" tall and weighs 174 pounds. Claimant is a high school graduate and has two years of college where he studied political science. Claimant is able to read and write and does have basic math skills.
10. Claimant last worked 2010 as a stage hand. Claimant has also worked as a cook at [REDACTED] and in New York and San Francisco.

11. Claimant alleges as disabling impairments: cirrhosis of the liver, hypokalemia, emotional outburst, chronic obstructive pulmonary disease, hepatitis C, hypertension, memory problems, neuropathy, back pain, left shoulder rotator cuff injury, head injury in October, 2012, seizures, congestive heart failure and 2 hernias as well as depression and panic attacks.

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 lives in a house, alone and his mother owns the home and supports him. Claimant is married but separated and has no children under 18 who live with him. Claimant has no income and does receive Food Assistance Program benefits. Claimant does not have a driver's license because of a prior DUI and he takes the bus 1 a month or gets rides. Claimant does make sandwiches and soups and cooks one time per day and he does grocery shop every other week and he needs help getting around. Claimant testified that his friends help him with his chores and he collects Japanese dolls. Claimant watches television 4 hours per day and uses the computer 1-2 times per week. Claimant testified that he can stand less than 1 hour, can sit for 2-3 hours at a time and can walk less than a mile. Claimant testified that he cannot squat or touch his toes but he can bend at the waist, shower and dress himself and tie his shoes if he is sitting down. Claimant testified that he does have a cane that is prescribed by his doctor because he is a fall risk. Claimant testified that he is left handed and he has neuropathy in his hands/arms and legs/feet. Claimant testified that his level of pain, on a scale of 1-10, without medication is an 8, and with medication is a 6. Claimant testified that the heaviest weight he can carry is 10 lbs and he does smoke a pack of cigarettes every three days, his doctors have told him to quit and he is not in a smoking cessation program. Claimant testified that he stopped drinking a month before the hearing and he was drinking a 1/5 of vodka per day. Claimant testified that he stopped doing drugs about 10 years before the hearing but he used to do marijuana, meth, LSD and cocaine. Claimant testified that on a typical day he gets up, uses the bathroom, calls his neighbor, goes to the store, fixes food, watches television and goes to sleep early because he is always fatigued. Claimant testified that he cannot lift his left arm above his head and that he was hit with a hammer in September, 2012 and had a closed head injury.

The claimant was hospitalized on October 22, 2012 due to weakness and found to be severely deficient in magnesium and potassium. He was medically treated with improvement and released in stable condition. The physical examination reported his blood pressure was 105/66. His lungs were clear. The abdomen area has no masses or hepatosplenomegaly. Labs reported his total bilirubin was 1.9 (p 1-4). The claimant was hospitalized on April 3, 2012 due to hypokalemia and cirrhosis. His blood pressure was

100/60. The abdomen had no hepatosplenomegaly. His lungs were clear. He had full range of motion of all joints (p 13-14). The physical examination on April 12, 2012 reported the abdomen was soft and mildly distended. The labs showed his bilirubin levels had decreased to 19.4 (p 16). An October 22, 2012 admissions report indicated the claimant was alert, cooperative and pleasant who looked his stated age. He was a one pack per day cigarette smoker. He continues to use alcohol. His blood pressure was 105/66, pulse 68 and regular and respirations 18 and regular. The head was normocephalic without bruits. The neck had no palpable thyromegaly or lymphadenopathy. In the eyes, pupils reacted to light and to accommodation. In the nose/mouth/throat area the tongue was midline on protrusion. The gag reflex was present and active. The chest was clear to auscultation and percussion. The left border cardiac dullness within the mid clavicular line was without knock, lift, rub, heave or thrill. In the abdomen area there was no hepatosplenomegaly nor is there lymphadenopathy. No masses in the abdomen. There are no bruits. The genitalia showed a normal adult male without hernia. He had impaired motion in both shoulders. Limited range of motion in both shoulders. Gait and station was not tested. The chest x-ray showed no acute findings. The admitting diagnosis was generalized weakness secondary to fluid and electrolyte imbalance and alcoholic liver disease (p 3-4).

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, confusion and memory problems.

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 48), with a more than high school education and an unskilled 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 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.

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/las

cc:

