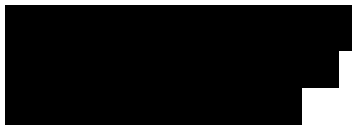


STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

**IN THE MATTER OF:**



Reg. No: 2013-2049  
Issue No: 2009;4031  
Case No: [REDACTED]  
Hearing Date: January 23, 2013  
Clare 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 January 23, 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 March 5, 2012, claimant filed an application for Medical Assistance, Retroactive Medical Assistance and State Disability Assistance benefits alleging disability.
2. On September 17, 2012, the Medical Review Team denied claimant's application stating that claimant could perform other work.
3. On September 19, 2012, the department caseworker sent claimant notice that his application was denied.
4. On September 25, 2012, claimant filed a request for a hearing to contest the department's negative action.
5. On November 28, 2012, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the medical evidence of record supports that the claimant would reasonably be limited to the performance of light exertional tasks of a simple and

repetitive nature. There is a history of drug and alcohol abuse (DAA) which does not appear to be present or material at this time. 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 listing. The medical evidence of record indicates that the claimant retains the capacity to perform light exertional tasks of a simple and repetitive nature. There is a history of drug and alcohol abuse (DAA) which does not appear to be present or material at this time. The claimant's past work was as a: inventory clerk, 222.387-026, 4M; handyman, 301.687-010, 2M; dishwasher, 318.687-014, 2M; and, hospital cleaner, 323.687-010, 2M. As such, the claimant would be unable to perform the duties associated with their past work. Likewise, the claimant's past work skills will not transfer to other occupations. Therefore, based on the claimant's vocational profile (46 years old, at least a high school equivalent education and a history of medium exertional, unskilled and semi-skilled employment), MA-P is denied, 20CFR416.920 (e&g), using Vocational Rule 202.20 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, 9.00.B5, 11.14 and 12.04/06/09 were considered in this determination.

6. Claimant is a 46-year-old man whose birth date is [REDACTED]. Claimant is 5'2" tall and weighs 235 pounds. Claimant is a high school graduate. Claimant is able to read and write and does have basic math skills.
7. Claimant last worked in December, 2011 as a self employed handyman. Claimant has worked as an inventory clerk, in a plastics factory, as a driver and as a counter clerk.
8. Claimant alleges as disabling impairments: degenerative disc disease. Diabetes mellitus, carpal tunnel syndrome, depression, bipolar disorder, post traumatic stress disorder, swelling in his hands, fluid on the hip, spurs on the back, fibromyalgia, and a cyst in the pelvic area.

### **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 his fiancée 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 does have a driver's license and drives 1-2 week to the store which is 10 miles away. Claimant does cook 4 times per week things like ramen noodles or anything else he wants to cook. Claimant testified that she does grocery shop using the amigo cart 2 times per month and needs help getting things off the shelves. Claimant testified that he does fold laundry and does dishes and he does word searches and watches television 12-15 hours per day. Claimant testified that he can stand for 4-5 hours at a time, sit for 10-12 hours at a time and walk 500 ft. Claimant testified that he cannot squat, but he can bend at the waist, shower and dress himself, tie his shoes when sitting and he cannot touch his toes. Claimant uses a cane which is not prescribed by a doctor. Claimant testified that he is right handed and his hands/arms are painful and swollen and his legs/feet have numbness and neuropathy. Claimant testified that he can carry 10 lbs and he does drink one beer a week. Claimant testified that on a typical day he gets up and showers, puts on his sweats and gets something to eat.

An August 18, 2012 medical examination report indicates that claimant's blood pressure was 88/67, respirations 18, pulse 137, height 5' 3" tall, weight 231 lbs. Visual acuity in the right eye is 20/50, left eye is 20/200. The patient was cooperative throughout the entire length examination. Patient's hearing is normal and speech is clear. Patient's gait is observed closely. Patient does have a normal gait; however, he walks with the assistance of a cane. He can, however, walk without the assistance of this cane which is demonstrated by his being able to walk appropriately inside the clinic. He also walks on his heels and toes without the assistance of his cane. He can walk heel to toe; however, he cannot crouch to the ground without difficulty. He crouches halfway and he reports that he has instability as well as pain in his legs. The patient was normocephalic, atraumatic. Patient has no jugular venous distention. Pupils equal, round and reactive to light and accommodation. Extraocular movements intact without nystagmus. No lymphadenopathy. No thyromegaly, neck is supple. The patient's mucous membranes are moist. The patient's throat is clear. No erythema. Nose is symmetric and atraumatic. In the skin, patient has no bleeding wounds, no scars, no bleeding ulcers. All four extremities have no cyanosis, no erythema or edema. The cardiac area had regular rate and rhythm. S1 and S2 are audible. Patient has mild tachycardia. There are no murmurs, skips or gallops appreciated. Point of maximal impulse is non displaced. He has no pulsus paradoxus. In the pulmonary area, lungs were clear to auscultation bilaterally without wheezes, rales or rhonchi. No adventitious breath sounds. In the abdomen bowel sounds are audible in all four quadrants. He is non tender to palpation. There is no hepatosplenomegaly felt. Patient is obese. In the neurologic area, cranial nerves 2-12 are grossly intact. Manual muscle testing reveals symmetric 5/5 strength in

all myotomes examined. Patient displays signs of symptom embellishment in the examiners opinion. He grimaces upon most manual muscle testing movements; however, he is able to perform all muscle movements at a 5/5 in strength bilaterally. Patient does complain of numbness in his bilateral lower extremities in a nonspecific distribution. He reports that he is deficient to pinprick in the medial surface of his leg on his left side, the lateral surface on his right side and bilateral medial surfaces of his thighs as well as the lateral surfaces of his thighs. There is no pronator drift. There is no dysmetria or dysdiadochokinesia appreciated on rapid alternating movements. There are no fasciculations or fibrillations of the patient's muscles. Patient's muscle bulk is appropriate. Muscle tone is appropriate. He has full grip strength. Digital dexterity is intact; however, he complains of severe pain upon performance of basic range of motion maneuvers. Straight leg raising test is performed and is positive per patient, approximately 20 degrees on the right side and 35 degrees on the left side in the supine as well as seated positions. Deep tendon reflexes are 2/4. In the orthopedic area there is no ligamentous laxity of the knees and ankles in both the anterior and posterior drawer test as well as the varus and valgus stresses on most joints. Patient is not able to squat down to the ground all the way. He can go approximately halfway and reports pain in his hips and legs and unsteadiness. There is no effusion or crepitus in his joints (p 262-263). A mental status evaluation dated August 14, 2012 indicates that claimant is likely to understand, retain and follow simple instructions. He can be expected to adjust to reasonable changes in a work environment. He reports difficulty finding work due to depression and chronic back pain. The back pain was described as interfering with functioning on a daily basis. His prognosis was guarded. He is able to manage his own funds. He was diagnosed with major depressive disorder recurrent, mild to moderate, and an axis V GAF of 60 (p 252).

At Step 2, claimant has the burden of proof of establishing that she 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: bipolar disorder, depression, and post traumatic stress 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 the 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 46), with a high school education and an unskilled work history who is limited to light work is not considered disabled pursuant to medical vocational rule 202.20.

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



2013-2049/LYL

- 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

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cc:

