

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-011771
Issue No.: 2009, 4009
Case No.: [REDACTED]
Hearing Date: October 30, 2014
County: Kalamazoo

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, a telephone hearing was held on October 30 2014, from Lansing, Michigan. Participants on behalf of Claimant included claimant and claimant's authorized hearings representative [REDACTED] from [REDACTED]. Participants on behalf of the Department of Human Services (Department) included, [REDACTED], Hearings Facilitator.

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 February 28, 2014, claimant filed an application for Medical Assistance, State Disability Assistance and retroactive Medical Assistance benefits alleging disability.
- (2) On April 30, 2014, the Medical Review Team denied claimant's application stating that claimant could perform other work.
- (3) On May 2, 2014, the department caseworker sent claimant notice that his application was denied.
- (4) On July 16 2014, claimant filed a request for a hearing to contest the department's negative action.
- (5) On October 30, 2014, the hearing was held. At the hearing, claimant's authorized hearing representative waived the time periods and submitted additional medical information.

- (6) Claimant is a 42-year-old man whose date of birth is [REDACTED]. Claimant is 5'10" tall and weighs 225 pounds. Claimant attended four years of college. Claimant is able to read and write and does have basic math skills.
- (7) Claimant last worked June 2013, as a detention officer. Claimant has also worked for 15 years as a correction officer.
- (10) Claimant alleges as disabling impairments: anemia, gout, depression, congestive heart failure, hip fracture, stroke, diabetes mellitus, memory problems, anoxic brain injury, neuropathy, arthritis and dyspnea.

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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The State Disability Assistance program differs from the federal Medical Assistance regulations in that the durational requirement is 90 days. This means that the person's impairments must meet the SSI disability standards for 90 days in order for that person to be eligible for SDA benefits.

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).

This Administrative Law Judge did consider the entire record in making this decision. Medical records included 1642 pages of prior medical information plus claimant exhibit A1 through A150.

At Step 1, claimant is not engaged in substantial gainful activity and has not worked since June 2013. Claimant 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 a family member who supports him. He is single with no children under 18 and no income. He receives no benefits from the Department of Human Services. Claimant does have a driver's license but his family member takes him where he needs to go. Claimant cooks breakfast two times per week. Claimant does not grocery shop. Claimant cleans the bathroom and washes dishes. Claimant watches television two hours per day and reads as a hobby. Claimant testified he can stand for five minutes at a time and have balance problems. He can sit for one hour at a time. He can walk 1/8 of a mile. He's able to shower, dress and tie his shoes but not

touch his toes. His knees are fine. Claimant testified he has gout in his hands, arms and ankles and has neuropathy in his feet. Claimant testified the heaviest weight he can carry is 20 pounds. Claimant stated that he smokes 5 to 7 cigarettes per day. His Dr. has told him to quit and he is not in a smoking cessation program. He drinks alcohol two times per week. His doctors told him to quit drinking alcohol.

A medical examination report dated [REDACTED], indicates that claimant was 69 inches tall. His weight was 231 pounds. The blood pressure was 130/89 on the right and one 26/82 on the left. The heart rate is 70 bpm. The respiratory rate is 18 and comfortable. The patient is afebrile to palpation. Claimant's pupils were equal, round and reactive to light. The sclera are non-icteric. The extra ocular muscles are intact. The dentition is fairly good. All the teeth are in place, although several are widely separated. There is no visible gingivitis. The neck shows no jugular venous distention. The carotid strokes are strong bilaterally without bruits. No supraclavicular lymphadenopathy. Respiratory area shows clear lung fields to auscultation and percussion bilaterally. Cardiovascular area shows regular rhythm with audible S1 and S2. There are no murmurs, he's, lifts or gallops. Gastrointestinal area shows the abdomen is protuberant with normal active bowel sounds. There is no hepato-jugular reflux. Skin shows no rash. There is a lidocaine patch adhered over the patient's low back. Musculoskeletal area shows no rheumatologic inflammation of the MCP or interphalangeal joints of either hand. Neurologic area shows intact and symmetric motor strength for all four extremities. The patellar reflexes are 2+ normal reflexes bilaterally. There is decreased position sense of the great toe on both sides. Psychological shows appropriate mood and affect. The ECG tracing done May 22, 2014 shows normal sinus rhythm. The rate is 62 B's for minute. The QRS axis is normal. The QRS duration is normal. There are no ischemic changes, claimant's exhibit A3-A4. There are no findings of heart failure. The kidney function is normal, claimant exhibit A5.

In [REDACTED], medical examination report indicates the echocardiogram the left ventricle cavity size is normal. The ejection fraction is 50 – 55%. The left ventricular systolic function is low normal. There is mild concentric left ventricular hyper trophy. There is great one diastolic dysfunction of the left ventricle. The right ventricle top is normal in size. The right ventricular function is normal. There's no valve disease. The filling pressures were assessed. The central venous pressure is low normal. The indication for this study is hypertension and reported prior heart failure. The study shows features of hypertensive heart disease including ventricular hyper trophy and diastolic dysfunction. Hypertension was controlled. He had no current signs or symptoms of heart failure. Patient was counseled on the importance of smoking cessation, claimant exhibit A9. An echocardiogram dated [REDACTED] indicates that the aortic root is normal size. The aortic arch as well visualized. There is no atheroma visible in the aortic arch. The pulmonary artery is normal size. The inferior vena cava measures 2.0 cm in diameter and collapses 80% with respiration. This indicates the central venous pressure is 3 mm Hg which is at the low end of normal. There is no pericardial effusion. There is no visible pleural effusion, claimant exhibit A13.

In [REDACTED], x-ray indicates that the heart remains within normal limits. There has been interval slight increase in diffuse bilateral lung infiltrates. There is a small to moderate size right pleural effusion present. There is a right jugular central venous catheter with its tip in the region of the superior vena cava, claimant exhibit A84.

An [REDACTED], Doppler of the lower extremities indicates negative deep venous ultrasound of both right and left lower extremities, claimant exhibit A 88.

A [REDACTED] 013, radiology report of the chest indicates bilateral airspace disease, left greater than right, which appear slightly worse than the prior examination, claimant exhibit A 90.

A [REDACTED], radiology report of the abdomen indicates that no hydronephrosis was noted. No etiology noted to account for the patient's elevated liver function tests. The spleen was normal in size and echogenicity. No stones or other abnormalities in the gallbladder. No dilation of biliary duct. No visualize calculi. The head and body of the pancreas had normal. The tale is obscured by overlying gas. The liver was unremarkable. No focal mass noted, exhibit A 118.

A [REDACTED], discharge summary indicates that claimant was diagnosed with depression and alcohol addiction. He had pneumonia and has maintained excellent saturation of 97% to 100% on room air and has no need for nasal canola oxygen since October 26. The patient's gout in his knee, ankle and right wrist and left middle finger have improved. He now has only mild pain at his left middle finger with some swelling related to his gout. The patient had acute kidney injury. The problem had resolved. His creatinine remained stable at approximately 1 throughout the hospitalization. Regarding claimants accuse systolic heart failure the patient's diuresis was decreased to 1 mg of Bumex daily. He had some orthostatic hypotension and was felt to be appropriate for decreases of medication. He was able to and labor physical therapy without feeling dizzy, exhibit A142 – A144.

A [REDACTED], admission document indicates that claimant was admitted to ICU for respiratory failure and acidosis. Claimant had known alcoholism. Claimant had tachycardia in the range of 135 per minute, normal sinus tachycardia, blood pressure 132 systolic. The impression was worsening respiratory failure along with worsening bilateral pneumonia leading to adult respiratory distress syndrome and worsening acidosis, exhibit A145 – A146.

A [REDACTED], medical examination report indicates that claimant was three weeks passed an intertrochanteric fracture of the right hip. He was doing well and was weight-bearing with a walker, page 40. A [REDACTED] medical examination report indicates that claimant had a normal gait without a Walker. His right hip fracture and symptoms were much improved with a reassuring physical exam. His radiographs show satisfactory healing of his right hip fracture. He had no pain with palpation of the hip. Active range of motion to flexion approximately 155°. Strength to hip flexion, extension,

abduction and abduction all 5/5 field mild pain with the passive internal rotation. Sensation to soft touch intact and right lower extremity. No pain with axial loading. Claimant was alert and coherent in no acute distress with normal body habitus, page 42.

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. 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's impairments lacked the durational requirement of 12 months or more. Claimant's impairments have improved significantly from the date of onset.

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 42), with a less than high school education and an unskilled work history who is limited to light, sedentary or unskilled 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.

Claimant's testimony and the information indicate that claimant has a history of tobacco, drug, and alcohol abuse. Applicable herein is the 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 alcoholism is a contributing factor material to the determination of disability. After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that claimant does not meet the statutory disability definition under the authority of the DA&A Legislation because his substance abuse is material to his alleged impairment and alleged disability.

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).

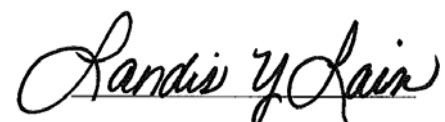
The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that claimant was not eligible to receive Medical Assistance and/or State Disability Assistance based upon disability.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of light or sedentary work even with his impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED based upon the substantive information contained in the file.



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

Date Signed: 11/06/2014

Date Mailed: 11/07/2014

NOTICE OF APPEAL: The claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely Request for Rehearing or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing System (MAHS) 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. MAHS 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 (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

LYL/sw

cc:

