

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]

Claimant

Reg. No: 2008-15320

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 10, 2008

Genesee 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 June 10, 2008. Claimant did not appear at the hearing. Claimant was on vacation for two weeks in Tennessee and no adjournment was granted. Claimant was represented at the hearing by [REDACTED]

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and retroactive Medical Assistance (retro 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 July 16, 2007, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.

(2) On July 20, 2007, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On December 26, 2007, the department caseworker sent claimant notice that his application was denied.

(4) On February 20, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) A second application was received on September 27, 2007 for claimant. Both applications are herein consolidated.

(5) On May 5, 2008, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The claimant was hospitalized with a myocardial infarction in [REDACTED]. Cardiac catheterization showed some stenosis but no program level stenosis. Medical management was recommended. On examination he had distant breath sounds and an increase in AP diameter. Heart sounds were normal. There was no JVD or edema. PFS showed his FEV1 of 2.89 was well above the listing level of 1.35 or less for his height. His FVC of 4.24 was also above the listing level of 1.55 or less. The claimant should avoid heavy lifting. The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of medium work. In lieu of detailed work history, the claimant will be returned to other work. Therefore, based on the claimant's vocational profile (of closely approaching advanced age at 50, GED and history of unskilled work), MA-P is denied using

Vocational Rule 203.21 as a guide. Retroactive MA-P was considered in this case and is also denied.

(6) The hearing was held on June 10, 2008. Claimant did not appear at the hearing and did not testify.

(7) Claimant's representative requested to allow leaving the record open and waived the time periods.

(8) Additional medical information was submitted on July 28, 2009 and sent to the State Hearing Review Team for further review.

(9) On August 3, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of sedentary work per 20 CFR 416.967(a) pursuant to Medical-Vocational Rule 201.21.

(10) The medical information in the file in the file indicates that claimant is a man whose birth date is [REDACTED]. A [REDACTED] medical report indicates that claimant was a 50-year-old white male with a weight of 174 pounds, blood pressure 144/99, respiration rate 12, and heart rate 66, who was not in distress. He had lungs with poor air exchange, regular heart, and a soft abdomen. He was diagnosed with chronic obstructive pulmonary disease.

(p. 312)

(11) Claimant alleges as disabling impairments: bad back, a hole in the eardrum, high blood pressure, high cholesterol, chest pains, and cardio obstructive pulmonary disease (COPD). According to the medical reports claimant has a high school education with a history of unskilled work.

CONCLUSIONS OF LAW

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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) 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, there is no information contained in the file as to whether or not claimant was working at the time of hearing. Therefore, this Administrative Law Judge will not disqualify claimant from receiving disability at Step 1 based upon his lack of substantial gainful activity.

The objective medical evidence on the record indicates that claimant was admitted in [REDACTED] due to a non-ST elevation myocardial infarction (MI). He had not been on any medications for his hypertension for two years (p. 54). An echocardiogram showed an ejection fraction of 45-50%. He had a cardiac catheterization which showed minor diffuse irregularities of the LAD, 30-40% stenosis in the mid segment of the circumflex, and 50% stenosis of the right coronary artery, marginal. Medical management was recommended (p. 55).

The claimant presented to the hospital in [REDACTED] due to chest pain. His EKG was non acute and troponin and the rest of his laboratories were unremarkable except for an elevated alcohol level. The claimant refused admission for rule out (p. 31).

On exam in [REDACTED], the claimant was noted to be a heavy smoker and drinker (p. 3). The claimant's blood pressure was 136/90. The claimant had typical chronic obstructive pulmonary disease (COPD) facies. Carotids were bilaterally palpable with no bruit. He had some mild use of his accessory muscles of respiration. He had increase in the AP diameter. Breath sounds were distant. Heart sounds 1 and 2 were heard. There was no gallop or murmur. There was no JVD and no edema. He walked with antalgic gait (p. 5). Pulmonary Function Studies (PFS) showed the claimant was 67" tall and his best FEV1 was 2.89 and best FVC was 4.24 (p. 7). X-rays of his hips were unremarkable (p. 8). X-ray of the lumbar spine showed moderate osteopenia, mild diffuse L-spine degenerative disc disease, moderate aortoiliac arterial calcifications, and minimal to mild bilateral degenerative sacroiliitis (p. 9). An MRI of the brain dated [REDACTED] indicates that the diffusion weighted sequences were normal. There was no intracranial hemorrhage, acute ischemia, or mass affect. The ventricles were normal in size. Several small foci of increased signal on FLAIR images were present in the periventricular and subcortical white matter regions bilaterally. Mild mucosal thickening was present in the left maxillary and ethmoid sinuses. There was fluid signal of mastoids. The vascular flow was unremarkable (p. 311).

A [REDACTED] medical report indicates that the claimant was instructed about the importance of quitting smoking. The impression was that he had severe chronic obstructive pulmonary disease secondary to smoking, hypertension, ethanol abuse, coronary artery disease with old myocardial infarction (pp. 312-313).

An eye examination dated [REDACTED] indicates that claimant's visual acuity was 20/20 in the right eye and 20/30 in the left eye. Manifest refraction improved him to 20/20. Anterior segment does reveal some corneal dryness with early nuclear sclerotic cataracts in both

eyes. Dilated fundus exam of the posterior pole does reveal normal appearing optic nerve, macula, vessels, and peripheral retina. Claimant's eyes were stable (p. 314).

A physical examination conducted [REDACTED] indicates claimant was in no acute distress. Vital signs: Blood pressure was 160/90 in the right arm and 150/90 in the left arm, pulses were 56 beats per minute and regular, and respiration was 16 and unlabored. His neck was without jugular venous distention. His lungs were clear to auscultation. His cardiovascular exam was remarkable for a regular rhythm and no hemodynamically significant murmurs. His abdominal exam was unremarkable for an enlarged abdominal aorta. His peripheral pedal pulses were full and equal and there was no pedal edema. His electrocardiogram demonstrated some T-wave changes in AVL but was otherwise unremarkable. He was told that he must quit smoking (p. 316).

The Social Security Administration denied claimant's application for Social Security disability on [REDACTED] stating that claimant was not disabled.

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. Claimant was not present at the hearing and this Administrative Law Judge did not take any testimony. Claimant therefore did not have any reports of pain in any areas of his body. The objective medical evidence in the record indicates that claimant did have a heart attack in [REDACTED]. However, the current information indicates that claimant's impairments lack duration as claimant did have a cardiac catheterization but had no program level stenosis. Claimant should avoid heavy lifting. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment which has lasted or will last the durational requirement of 12 months or more.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers mental limitations or has any type of depression. There is no mental residual functional capacity assessment in the record. 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. In the instant case, the record is replete with information that claimant did continue to smoke despite the fact that his doctors have told him to quit and despite the fact that he had a heart attack. 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 gainful activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

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. In fact, the Social Security Administration has determined that claimant is not disabled for purposes of the Medical Assistance benefits in this case. The Social Security Administration determined that claimant was not disabled.

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 prior work. Medical Examination Reports in the file indicate that as of [REDACTED], the clinical impression was that claimant was stable and that he had a temporary disability and he should have been able to return to work [REDACTED]. He could frequently lift 10 pounds or less and never lift 20 pounds or more. He could stand or walk less than two hours in an eight-hour day and he could sit about six

hours in an eight-hour day. He could use both of his upper extremities for repetitive actions such as simple grasping, reaching, pushing/pulling, and fine manipulating and operate foot and leg controls with both feet and legs. Claimant had no mental limitations. As of [REDACTED] claimant was 5' 7" tall and weighed 161 pounds and his blood pressure was 132/64 (pp. 60-61). Another Medical Examination Report indicates that claimant was stable and improving by treatment and could stand two hours in an eight-hour workday, walk two hours in an eight-hour workday, and sit four hours in an eight-hour workday. Claimant could frequently lift up to 10 pounds and he could do simple grasping, reaching, pushing/pulling, and fine manipulating with both upper extremities and use both feet and legs for operating foot and leg controls. This report was dated [REDACTED] (p. 63). This Administrative Law Judge finds that claimant could probably perform his prior work. However, the information in the file does not indicate what jobs claimant has worked at in his past or when he last worked. Therefore this Administrative Law Judge will not disqualify him at Step 4 because of lack of information. The only information contained in the file about claimant's work is that he was a paver and operator for [REDACTED] from 1985 to 2005. Therefore, this Administrative Law Judge finds that claimant is disqualified from receiving disability at Step 4, since he should be able to perform his prior work even with his impairments.

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.

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.

The information contained in the file indicates that claimant has history of alcohol and tobacco abuse. Applicable hearing is the Drug Abuse and Alcohol (DA&A) Legislation, Public Law 104-121, Section 105. 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 record, this Administrative Law Judge finds that even if claimant did meet the disability determination, he would 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.

There is insufficient objective medical 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. There is insufficient information about any complaints of pain in the file. 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, based on claimant's vocational profile of closely approaching advanced age 50, GED, and a history of unskilled work, MA-P is denied using Vocational Rule 203.21 as guide. Retroactive MA-P was considered in this case and is also denied.

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 and retroactive Medical 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.

/s/

Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: September 16, 2009

Date Mailed: September 16, 2009

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.

LYL/vmc

cc:

