

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: 2008-24761
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 22, 2009
Montcalm 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 January 22, 2009. Claimant personally appeared and testified. 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) In January 31, 2008, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits to October 2007, alleging disability.

(2) On April 9, 2008, the Medical Review Team denied claimant's application stating that claimant can perform other work.

(3) On April 11, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On June 17, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On July 29, 2008, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the claimant fractured his leg in [REDACTED] and had ORIF of the fracture. In [REDACTED] he was still using a cane but his fracture was healing. The fracture would not be expected to prevent him from all types of work for 12 months in a row. The claimant was also noted to have a seizure disorder and occasional seizures limiting his ability to drive a motor vehicle. The doctor reported he had bipolar disorder with exacerbations of psychosis. The claimant does not report any mental health treatment. He apparently only receives treatment from his family physician. His mental status was normal in [REDACTED]. The claimant's condition appears to be controlled with medications from the family physician and has not required further treatment. The physical limitations given by the family doctor would not be expected to last 12 months in a row as the claimant's fracture was healing. The claimant would be able to do at least simple unskilled medium work, avoiding unprotected heights and dangerous moving machinery. 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 unskilled medium work avoiding work around unprotected heights and dangerous moving machinery. In lieu of detailed history, the claimant will be returned to other work. Therefore, based on the claimant's vocational profile of

a younger individual, limited education and unknown work history, MA-P is denied using Vocational Rule 20 as a guide. Retroactive MA-P was considered in this case and is also denied.

(6) The hearing was held on January 22, 2009. 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 for further review on January 27, 2009.

(8) On January 29, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the claimant fractured his leg in [REDACTED] and had ORIF. The claimant noted significant pain in the leg in [REDACTED] and [REDACTED]. However there are some inconsistencies. The 49 form reported need for an ambulation aid. But in [REDACTED] his gait was normal and at the mental status exam he did not have any ambulation aid. The [REDACTED] records do not indicate any need for ambulation assistance. In [REDACTED] the claimant reported he was doing well and had actually been out hunting and had twisted his ankle out hunting. It appears the ambulation assistance is needed more possibly for the pain. The claimant was also noted to have a seizure disorder and noted to have one seizure between [REDACTED] and [REDACTED]. However, there are not blood levels in the file to indicate if his anticonvulsant levels were therapeutic or not at the time. His occasional seizures limit his ability to drive a motor vehicle but did not meet or equal program severity. The family reported that claimant does have a bipolar disorder which was noted to be currently stable. The claimant does report any mental health treatment. A mental status exam in [REDACTED] purchased by the DDS showed claimant was irritable and angry but there was no evidence of a significant thought disorder. He had no Axis I diagnosis. His diagnosis was personality disorder. Based on the information in the file the claimant would be able to do at least simple unskilled light work

avoiding work around unprotected heights and dangerous moving machinery. 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 unskilled light work avoiding work around unprotected heights and dangerous moving machinery. In lieu of detailed work history, the claimant will be returned to other work. Therefore, based on the claimant's vocational profile of a younger individual, limited education and unknown work history, MA-P is denied using Vocational Rule 202.18 as a guide. Retroactive MA-P was considered in this case and is also denied.

(9) Claimant is a 49-year-old man whose birth date is [REDACTED]. Claimant is 5' 6" tall and weighs 185 pounds. Claimant attended the 10th grade and has no GED. Claimant was in special education for reading and speech and does have limited reading and writing skills and is able to perform basic math skills.

(10) Claimant last worked in 2006 making bathroom sinks. Claimant has also worked as a drywaller, painter, auto body technician, cook and a janitor.

(11) Claimant alleges as disabling impairments: a tibia break, bipolar disorder, seizures, headaches, and cervicalgia.

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, claimant is not engaged in substantial gainful activity and has not worked since 2006. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence in the file indicates that the claimant was admitted in [REDACTED] after he fell from a tree blind while hunting and fractured his left distal tibial fibula. He underwent open reduction and internal fixation (ORIF) of the fracture (Page 33). In [REDACTED] the claimant's mood and affect were noted to appropriate. He was alert and oriented x3 (Page 34). An x-ray dated [REDACTED] showed there was new bone formation developing around the distal tibial and fibular fracture sites, immobilized by surgical hardware without evidence of a complicating process (Page 13).

A DHS-49 form dated [REDACTED] showed that in addition to the leg fracture the claimant also had a bipolar disorder, a seizure disorder with occasional seizures which prevent him from operating a motor vehicle and chronic cervicgia with headaches. On exam he was using a cane for ambulation. He still had tenderness at the left ankle/distal leg with palpation. He also had tenderness of the cervical spine with palpation and right shoulder with lateral flexion. He had limited motion of the left ankle. He was alert and oriented and able to follow directions. He was also noted to have a fatty liver. His exam was otherwise within normal limits (Page 11). The doctor indicated he could frequently lift 25 pounds from a sitting position. He could not stand/walk at all. He was noted to have some occasional mental limitations due to his low reading ability and bipolar with occasional exacerbations.

An x-ray dated [REDACTED] showed very little change since [REDACTED] of the distal tibial fracture. The fibular fracture was healing. (Client Exhibit A, page 5). On [REDACTED] the claimant was seen in follow-up of his leg fracture. He had re-injured his leg three days earlier. He noted he had been doing quite well and was out turkey hunting when he twisted the ankle

when stepping on a rock. The wound was healing. There was no significant swelling. There was mild discomfort of the medical aspect of the ankle. No pain over the proximal fibula or fibular shaft. No pain over the syndesmosis. This ankle was stable (new information from DDS).

On [REDACTED] the claimant was seen in follow-up of his seizures. He reported one seizure since his last appointment in [REDACTED]. At that time his ankle was getting much better. On exam muscle strength was about 5/5 in both upper and lower extremities except the left ankle. Deep tendon reflexes were symmetrical. Sensory was normal. (Client Exhibit C, page 11).

In [REDACTED] the claimant's upper extremity muscle strength was 5/5 in all major muscle groups except extension of the right wrist which was very limited and the range of motion was very limited. The hand grip strength was equal and symmetrical bilaterally. Intraosseous muscles were isolated and were within normal limits. His lower extremity muscle strength was 5/5 except the left plantar flexion and dorsiflexion was limited secondary to pain. He did have mild edema 1+ to the knee on the left. Multiple scars were noted. There was cyanosis present at the time of the exam however the claimant had cap refill of less than two seconds in all toenails tested and his dorsalis and pedis pulse was palpable bilaterally. (Client Exhibit B, page 7). The left lower extremity was cool to touch. Dorsi and plantar flexion showed range of motion of the left lower extremity was very tight and limited. His dorsiflexion was 5 degrees and plantar flexion 10 degrees. The findings were consistent with nociceptive post surgical pain in the left lower extremity deconditioning and scar formation of the left lower extremity from post surgical changes. (Client Exhibit B, page 8).

A mental status exam dated [REDACTED] showed the claimant was irritable throughout and answered with clipped monosyllables most of the time. He used no assistive devices and had

no abnormal gait patterns when he came in. He seldom made direct eye contact. His facial expression was unchangingly flat and his voice was soft and difficult to hear. He gave no spontaneous responses but the answers he gave to questions were goal directed despite being terse. He was generally logical and coherent, simple and more concrete than abstract. He demonstrated no distractibility or impulsivity. He denied hallucinations. There were no indications of delusional ideations. His overall mood was angry and irritable with moderately to tense affect. He had no Axis I diagnosis and his Axis II diagnosis was anti-social personality disorder (new information from DDS).

A DHS-49 form dated [REDACTED] indicated that claimant has chronic pain and uses a cane for ambulation and ambulates with a limp. He had tenderness of the left ankle, cervical and LS spine. There was left ankle swelling. He was noted to have a seizure disorder and bipolar disorder which was stable with meds but he had difficulty with concentration and comprehension. (Client Exhibit A, page 1). The claimant has pain with any walking and it was noted that he was unable to walk without assistance for distances greater than twenty feet. (Client Exhibit A, page 2).

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 no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. There is some conflicting information in the file with one form indicating that claimant does need an assistive device in the form of a cane and another document stating that claimant did not medically require assistance for ambulation. However a DHS-49 indicates that claimant can lift 10 pounds or less occasionally and can do simple grasping, reaching, pushing and pulling and fine manipulating

with both left and right hands and that he can operate foot and leg controls with the right foot or leg. Claimant needed a cane for longer distances when asked if assistive devices were medically required or needed for ambulation. (Client Exhibit A, page 2). The clinical impression is that claimant is stable. There is no medical finding that claimant has any kind of muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In [REDACTED], claimant was able to walk without assistance and had no abnormal gait patterns. He then re-injured himself after the [REDACTED] medical report. This Administrative Law Judge finds that claimant's impairments do not meet duration in that his tibial fracture was well healed by [REDACTED] and that he then re-injured himself later.

There is insufficient objective medical evidence in the record indicating that claimant suffers severe mental limitations resulting from his reportedly depressed state or from his bipolar disorder. Claimant was oriented x3 at the hearing and was able to answer all the questions and was responsive to the questions. The evidentiary record is insufficient to find claimant suffers a severely restrictive mental impairment. For the foregoing reasons, this Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical or mental impairment. The DHS-49 contained in the file at page 12 indicates that claimant can sit approximately six hours in an eight hour work day and that he can frequently pick up 25 pounds from a sitting position.

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.

Claimant testified on the record that he lives with his father in a house and is single with no children under 18. Claimant testified that his driver's license was suspended because of his

seizures and his father takes him where he needs to go. Claimant testified that he does cook one to two times per week and he cooks things like hamburgers and hotdogs. The claimant testified that he does grocery shop every couple of months but he needs help with carrying the groceries and in [REDACTED] he uses the electric cart to drive around the grocery store. Claimant testified that he does vacuum his home and doesn't do any outside work. Claimant testified that he can walk from the building to the car with a cane and that he can stand for a half an hour and can sit with no limits. Claimant testified that he can shower and dress himself and can tie his shoes and bend at the waist but not squat and he hasn't tried to touch his toes. Claimant testified that the heaviest weight he can carry is 10 pounds and that he's right handed and that he has arthritis in his hands and arms and wrists. Claimant testified that his level of pain on a scale from 1 to 10 without medication is an 8 and with medication is a 5. Claimant testified that he does smoke a pack of cigarettes a day and his doctor has told him to quit and he is not in a smoking cessation program. Claimant testified that he hasn't drunk alcohol in 6 or 7 years and he stopped using cocaine 20 years before the hearing.

Claimant testified that in a typical day he takes a bath and watches television for 5 to 6 hours. He is in pain all the time.

The Administrative Law Judge finds that claimant has established that he probably cannot perform his prior jobs as a drywall installer, painter or auto body tech because it does require extensive standing. Therefore, claimant is not disqualified from receiving disability 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).

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 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 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. Claimant did testify

on the record that he does continue 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 gainful activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

Claimant testified on the record that he does have a bipolar disorder and doesn't like large groups of people and doesn't like authority. Claimant testified that he has had his bipolar disorder all his life.

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 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'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. Claimant was able to answer all the questions at the hearing and was responsive to all the questions. Claimant was oriented to time, person and place during the hearing. 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 sedentary work even with his impairments.

Claimant does retain bilateral manual hand dexterity. Under the Medical-Vocational guidelines, a person who is a younger individual, with limited education and previous work experience is not considered disabled pursuant to Medical-Vocational Rule 201.03 if they are limited to sedentary work.

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 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: March 5, 2009

Date Mailed: March 6, 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.

2008-24761/LYL

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:

