

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: 2008-5774
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 19, 2008
Mason 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 November 19, 2008. 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 May 31, 2007, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.

(2) On June 26, 2007, the Medical Review Team denied claimant's application stating that claimant impairments lacked duration.

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

(4) On October 4, 2007, claimant filed a request for a hearing to contest the department's negative action.

(5) On January 18, 2008, the State Hearing Review Team again denied claimant's application stating in its analysis and recommended decision: his condition is expected to improve post operatively. The medical evidence of record indicates that the claimant's condition is improving or is expected to improve within 12 months from the date of onset or from the date of surgery. Therefore, MA-P is denied due to lack of duration under 20 CFR 416.909.

Retroactive MA-P was considered in this case and is also denied.

(6) The hearing was held on November 19, 2008. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(7) Additional medical information was submitted and sent to the State Hearing Review Team on January 23, 2009.

(8) On February 9, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommended decision: the claimant had bypass surgery in [REDACTED]. In [REDACTED] he had a normal stress test. However, a repeat catheterization showed his graft to obtuse marginal artery and graft to the ramus intermedius was closed. His graft to the left anterior descending was wildly patent. There was no flow limiting disease in the right coronary artery. While the two grafts that were closed his stress test was negative and Listing 4.04 indicates that the negative stress test would take precedence. His symptoms did improve

with a change in medication. The claimant also does not meet Part 2 of 401 C1e2. Therefore, the claimant does not meet any of the cardiac listings. He also has a history of substance abuse and depression but is able to do simple unskilled light work. Public Law 104-121 is cited due to materiality of drug and alcohol abuse. The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence indicates that the claimant retains the capacity to perform a wide range of simple unskilled light work. 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 a history of unskilled work MA-P is denied using Vocational Rule 202.17 as a guide. Retroactive MA-P was considered in this case and is also denied.

(9) Claimant is a 48-year-old man whose birth date is [REDACTED]. Claimant is 5' 4" tall and weighs 200 pounds. Claimant attended the 9th grade and has no GED. Claimant is able to read and write somewhat, and add, subtract and multiply and count money.

(10) Claimant last worked three years ago at [REDACTED] stripping and waxing floors. Claimant also worked construction, spray painting furniture, booths in restaurants and building games.

(11) Claimant alleges as disabling impairments: coronary artery disease, triple bypass, back pain and diabetes mellitus.

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 approximately 2006. Therefore, claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that in [REDACTED], claimant underwent a triple coronary bypass. (Pages 65-80) Post operatively his treating physician noted coronary artery disease, non-insulin dependent diabetes and back pain as a diagnosis. He was 5' 3" and weighed 205 pounds; his blood pressure was 130/70. (Pages 8-9)

A mental status exam dated [REDACTED] showed the claimant has a history of alcohol abuse. He reported being sober since [REDACTED]. His speech was normal and clear. He described his mood as sad and depressed. His affect was stable. Thoughts were logical, linear and goal directed. There was no evidence of psychotic symptoms. He gave very coherent and relevant answers to all questions. (A2) Diagnosis included major depressive disorder, single episode, severe without psychotic features; post traumatic stress disorder; and alcohol dependence. (A3) In [REDACTED] the claimant reported polysubstance abuse and alcohol abuse. He gave inconsistent reports about his drinking. He reported he had not drank since his surgery and also reported he drank a considerable amount since his surgery in [REDACTED]. (A5)

In [REDACTED] the claimant had a Persantine myoview with no chest pain, angina, arrhythmia or obvious provokable ischemia. An echo doppler showed an ejection fraction was at best 50 percent. (C9)

In [REDACTED] the claimant underwent cardiac catheterization and angiography. He was status post grafting to his left anterior descending and individual vein grafts to his obtuse

marginal artery and ramus intermedius in [REDACTED]. His vein grafts to the ramus intermedius into the obtuse marginal artery were found to be closed. The left internal mammary artery graft to his left anterior descending remained widely patent. He has no flow limited disease to his right coronary artery. His pain was improving with change or transition in his medications. (C12)

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 a duration of at least 12 months. The DHS-49 form indicates that claimant is disabled due to coronary artery disease and chronic back pain and that he can occasionally lift 10 pounds or less and stand or walk less than two hours in an eight hour work day. Claimant can use his hands for simple grasping and repetitive action but not reaching, pushing and pulling and the doctor was unsure about the fine manipulating. Claimant cannot operate foot and leg controls. Claimant's only mental limitation was sustained concentration. (Claimant Exhibit B2) The medical examination report at B1 indicates that claimant has a general normal appearance and that he has a history of chest pain and breath sounds. The medical reports at B3 indicate that claimant has marked limitation of physical activity and is comfortable at rest and less than ordinary activity causes fatigue, palpitations, dyspnea or anginal pain. He also has a cardiac classification of D in patients with cardiac disease whose ordinary physical activity should be markedly limited.

At Step 2, claimant has established that he does have a severe impairment or combination of impairments which have lasted or will last the durational requirement of 12 months or more.

At Step 3, claimant's impairments do not rise to the level necessary to specifically listed as disabling as a matter of law.

At Step 4, claimant testified on the record that he lives with his cousin and parents and that he does not have a driver's license because he has a second DUI offense. Claimant is

widowed with no children under 18 who live with him. Claimant testified that he does take [REDACTED] or his parents or his cousin take him where he needs to go. Claimant testified that he cooks two times per day and cooks things like vegetables, sandwiches and soups. The claimant testified that he grocery shops two times per month and he only needs transportation but no help. Claimant testified that he does clean his room and do dishes and laundry. Claimant testified that his hobby is to take his rottweiler for a walk. Claimant testified that he can walk one block before his chest and legs hurt and that he can stand for six to ten minutes at a time and sit for a half an hour before he gets stiff. Claimant testified he can squat painfully but can't bend well at the waist but he is able to shower and dress himself and tie his shoes but not touch his toes. Claimant testified that the heaviest weight he can carry is a gallon of milk and that he's right handed and that he has pain in his left shoulder and a numb left hand and that his legs and feet hurt. Claimant testified that his level of pain without medication is a 20 on a scale from 1 to 10 and with medication is a 6 to a 7. Claimant testified that he does smoke three cigarettes a day and his doctor has told him to quit and he is not in a smoking cessation program. Claimant testified that he used to drink a lot of alcohol but he has been stopped for one year. Claimant testified that he used to try to drink himself to death and that he used to drink a fifth per day. Claimant testified that he no longer does any drugs but he did used to do marijuana and everything else but has been stopped for 15 years.

Claimant testified that in a typical day he gets up and he hooks his dog up and then goes to the bathroom and he lets the dog out and watches TV all day long.

The Administrative Law Judge finds that claimant has established that he can probably no longer perform any of his prior work since it involves heavy machinery and construction. Claimant's prior work was stripping and waxing floors, construction and spray painting booths in

restaurants as well as building games. Claimant's prior work required some heavy lifting and therefore he would not be 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 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 sedentary work

Claimant testimony and the information contained in the file indicate that claimant as a history of alcohol and tobacco abuse. Claimant is not in compliance with his treatment program because he does have coronary artery disease and he continues to smoke cigarettes.

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).

Applicable hearing is the Drug Abuse and Alcohol Legislation, Public Law 104-121, Section 105(b)(1), 110 STAT 853 (42 USC 423(d)(2)(C), 1382(c)(a)(3)(J) which indicates that an individual shall not be considered to be disabled for purposes of the statute if alcoholism or drug addiction would be a contributing factor material to the determination that claimant is disabled. This Administrative Law Judge finds that even if claimant has been determined to be disabled, he is not in compliance with his treatment program and his substance abuse was material to his alleged impairments and alleged disability.

Claimant testified on the record that he does have depression.

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. In addition, based upon claimant's medical reports, it is documented that he had heavy use of alcohol, as well as tobacco abuse, which would have contributed to his physical and any alleged mental problems. 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. In addition, claimant testified on the record that he does receive substantial relief from his pain medication. 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. Under the Medical-Vocational guidelines, a younger individual, with limited education and a history of unskilled work who is limited to sedentary work is not considered disabled pursuant to Medical-Vocational Rule 202.17.

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: February 26, 2009

Date Mailed: February 26, 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

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