

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 2009-19128
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 21, 2009
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 July 21, 2009. Claimant personally appeared and testified. Claimant was represented at the hearing [REDACTED]. The hearing record closed on July 8, 2010. Claimant was scheduled for an appointment which was requested from the State Hearing Review Team for a [REDACTED] for September 3, 2009. Claimant did not show up for the appointment and did not call to make an excuse or to reset the appointment and there has been no recent contact with the claimant and therefore the record will close as of July 8, 2010, and proceed to decision without the State Hearing Review Team reconsidering additional medical information.

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 August 28, 2008, claimant filed an application for Medical Assistance, State Disability Assistance and retroactive Medical Assistance benefits alleging disability.
- (2) On December 9, 2008, the Medical Review Team denied claimant could perform other work.
- (3) On February 4, 2009, the department caseworker sent claimant notice that his application was denied.

- (4) On February 26, 2009, claimant filed a request for a hearing to contest the department's negative action.
- (5) On May 1, 2009, the State Hearing Review Team again denied claimant's application per 20 CFR 41 6.913(d) and stated that it had insufficient information in which to make a decision and requested a complete physical consultative examination and updated medical information.
- (6) An appointment was set for claimant September 3, 2009. Claimant did not attend the appointment and did not call or show for the appointment. Claimant's representative did not request an extension of time for the record to be left open, while claimant did not show up for the appointment and did not provide this Administrative Law Judge with any additional medical information. Therefore, the record is closed and this Administrative Law Judge will proceed to this decision.
- (7) Claimant was on the date of hearing a 37-year-old man whose birth date is [REDACTED]. Claimant is 5'6" tall and weighs 145 pounds. Claimant attended the 10th grade and has no GED. Claimant is able to read and write and does have basic math skills.
- (10) Claimant last worked 2008 for [REDACTED] doing landscaping before he injured his back. Claimant has also worked in construction and landscaping from the age of 14.
- (11) Claimant alleges as disabling impairments: low back pain, depression, degenerative disc disease, herniated disc, anxiety, and depression as well as suicidal feelings.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant is not engaged in substantial gainful activity and has not worked since 2008. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant lives alone in an apartment and is supported by [REDACTED] and [REDACTED]. Claimant had no driver's license and his wife or his neighbor takes him where he needs to go. Claimant cooks in the microwave and cooks things twice a day like TV dinners and hotdogs. Claimant does grocery shop 2 times per month and stated that he needed help carrying groceries and usually gets help from his ex-wife. Claimant testified that he cleans his home by doing light cleaning and doing the dishes and his ex-wife does most of the cleaning for him. Claimant testified that he can walk 2 hours, stand for 10-15 minutes at a time and can sit for a half an hour at a time. Claimant is able to shower and dress himself. Claimant stated that he could squat but doesn't if he doesn't have to. Claimant testified that the heaviest weight that he can carry is 10-15 pounds and he is right handed. His level of pain on a scale from 1-10 is an 8 without medication and with medication is a 5-6. Claimant did testify that he does smoke 4-5 cigarettes per day and

his doctor has told him to quit and he is not in a smoking cessation program. Claimant testified that in a typical day he lies around most of the day and goes from the bed to the couch and he has major problems sleeping and taking a lot of baths for relief and medications mess up his stomach.

A [REDACTED] institute report from December 8, 2008, indicates that on physical examination claimant was alert and oriented x3. He was alert and in no acute distress. He was well-nourished and had a normal voice. His head was normocephalic and atraumatic with no lesions or palpable masses. His facial Global assessment was atraumatic. Strength and tone and the facial muscle strength and tone were normal. In the left and right eye scleral icterus was not present. His pupils were reactive to light and round. His chest and lung exam revealed no crackles, wheezes, respirations were unlabored and the chest was clear to auscultation bilaterally. Inspection of the chest wall revealed it was normal. Palpation of the chest reveals non-tender. Auscultation and breath sounds were normal. Cardiovascular: examination revealed no digital clubbing, no cyanosis, edema, increased room for tenderness. Palpation and percussion: examination by palpation and percussion reveals no S3 palpable. Auscultation: rhythm was regular, heart sounds were normal heart sounds. Auscultation of the heart revealed no murmurs and no carotid bruit. Inspection of the abdomen revealed no visible peristalsis and no abnormal pulsation. There was a normal contour. Palpation and percussion of the abdomen revealed no rebound tenderness, no rigidity or guarding and no palpable abdominal masses. Auscultation of the abdomen revealed bowel sounds normal in all 4 quadrants. Cranial nerves 2-12 grossly intact. Overall assessment and muscle strength and tone revealed 5/5 in all extremities. General assessment of reflexes Hoffman's test was negative. There was no clonus present in the ankles. Reflexes normal. Neuropsychiatric: the claimant's mood and affect were described as normal but judgment and insight was appropriate concerning matter relevant to himself. Examination of the lumbosacral spine revealed normal lumbosacral spine movements. Assessment of pain reveals the pain over the right SI joint and pain over the left SI joint. Straight leg raise was negative on both the right and the left side. There was no generalized lymphadenopathy. He was assessed with sacroiliitis and lumbago-lumbalgia pain.

The MRI of the lumbar spine dated May 8, 2008, demonstrated L1-2 modic in plate changes. There are modic in plate changes at L4-5. There is severe L4-5 foraminal stenosis. There degenerative disc disease from L1-2 to L5-S1. He said that his right leg is worse than his left. The plan was sacroiliac joint injections bilaterally and home therapy (pp. 4-5). This Administrative Law Judge did consider the entire record of 105 pages of medical evidence.

A MRI of the spine on May 8, 2008, indicates that the impression was status post lumbar laminectomy at L4-L5 on the left side and 3 level disc herniations at the midline from L2 to L4-L5 level and bilateral extension of herniated disc to the neural foramen of L2, L3, and L4. There is presence of enhancing granulation tissue surrounding the recurrent and residual disc herniation at L4-L5 particularly on the left side (p. 12).

A May 1, 2009, State Hearing Review Team decision indicates that claimant is capable of performing other work in the form of unskilled work per 20 CF R 416.968(a) pursuant to Medical Vocational Rule 202.20.

A physical examination dated May 16, 2008, indicates that claimant's blood pressure was 127/67, heart rate 81, respirations 20, temperature 98 degrees, oxygen saturation 100%. The claimant was alert and oriented x3. Moderate stress and discomfort. Regular rate and rhythm in the cardiovascular with no murmurs, rubs or gallops. S1 and S2 heard. No heaves or thrills. Respiratory was clear to auscultation bilaterally. No wheezes, rales, or crackles. The HEENT was atraumatic and normocephalic head. No discharge. Pupils were equal, round and reactive to light in accommodation. Extraocular muscles are intact. No nystagmus. Nares, oral pharynx, tympanic membranes patent. The abdomen was soft, the bowelsounds x4. Non-tender and non-distended. No hernia. In the neurologic area, the cranial nerves 2-12 were intact. No focal deficits. There were 5/5 muscles strength and 4/5 muscle sensation in the lower extremities bilaterally. There are 2/4 deep tendon reflexes. No Babinski, no pronator drift. In the extremities there was no cyanosis, clubbing or edema. No calf tenderness. Negative JVD. Negative carotid bruits. Pulses x4 bilaterally in the vascular system. In the musculoskeletal area, changes of increased tissue texture at T5 sacrum. Tenderness to palpation and increased tone. There was in the laboratory negative urinalysis. Pending CBC, pending chem 18. Lumbar x-ray narrowing at L4 and L3. Degenerative disc disease. MRI showed multilevel disc herniation (p. 32).

This Administrative Law Judge finds that the State Hearing Review Team did make a determination that claimant was not disabled originally on May 1, 2009. The hearing was left open for admission of additional medical information. The additional medical information was submitted and sent to the State Hearing Review Team on July 22, 2009, at which time the State Hearing Review Team then on July 28, 2009, requested additional medical information without stating what information it considered amongst the new information. This Administrative Law Judge did review the new information pages A1-A6 and pages B1-29 as new information and determined that there was sufficient information in which to make a determination in this case. The State Hearing Review Team did not establish why they felt that there was not sufficient information to make a determination and claimant is not in compliance with his treatment program because he did not attend the updated physical consultative examination which was requested by the State Hearing Review Team on September 3, 2009.

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 alleges the following disabling mental impairments: depression and anxiety and chronic pain.

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 a gain 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 37), with a less than high school

education and an unskilled work history who is limited to light work is not considered disabled.

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.

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.

Landis

/s/

Y. Lain

Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: July 28, 2010

Date Mailed: July 29, 2010

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/alc

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