

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: 2009-26909

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

September 10, 2009

Bay 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 September 10, 2009. Claimant personally appeared and testified.

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 December 22, 2008, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.

(2) On February 11, 2009, the Medical Review Team denied claimant's application stating that claimant's impairments lacked duration.

(3) On February 17, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On May 20, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On July 2, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: Despite a presentation in November with significant findings there are no significant residual deficits. His memory and mental function was within normal limits. Physical functioning was also within normal limits. Medical opinion was considered in light of CFR 416.927. The evidence in file does not demonstrate any other impairment that would pose a significant limitation. The medical evidence of record does not document a mental/physical impairment(s) that significantly limits the claimant's ability to perform basic work activities. Therefore MA-P is denied per 20 CFR 416.921(a). Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 due to lack of severity.

(6) The hearing was held on September 10, 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 on September 11, 2009.

(8) On September 18, 2009, the State Hearing Review Team again denied claimant's application stating in its denial that claimant had a non-severe impairment/condition per 20 CFR 416.920(c).

(9) Claimant is a 42-year-old man whose birth date is [REDACTED]. Claimant is 5' 9-1/2" tall and weighs 185 pounds. Claimant attended the 11th grade and has a GED. Claimant is able to read and write and does have basic math skills.

(10) Claimant last worked in 2007 as a server at a restaurant. Claimant has also worked as an audiovisual technician and as an assistant manager at a restaurant.

(11) Claimant alleges as disabling impairments: a cerebrovascular accident, as well as cerebrovascular disease, a closed head injury, seizures, skin problems, arthritis, muscle weakness, short-term memory loss, depression and mood swings, a bad knee, and back pain.

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 2007. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a Medical Examination Report indicates that the clinical impression is that claimant is stable and he has a temporary disability and is expected to return to work [REDACTED]. Claimant could occasionally lift ten pounds or less but never lift twenty pounds or more, and could stand or walk less than two hours in an eight-hour day, but can sit less than six hours in an eight-hour day. Claimant could do simple grasping, reaching, pushing/pulling with both upper extremities and could operate foot and leg controls with his left foot only. Claimant had no mental limitations. The medical report is dated [REDACTED] from the family practice doctor. (pp. A1-A2 of the new medical information)

Hospital records of [REDACTED] reported the claimant was treated for right-sided weakness. Objective evidence suggested it was a severe migraine rather than a cerebral infarct. (p. 76)

Neurologic examination of [REDACTED] reported findings that were within normal limits including normal muscle tone and strength bilaterally and a normal gait. Memory was intact. There were no residuals of a major event happening. On [REDACTED] on a Medical Examination Report, claimant's blood pressure was 128/85. His pulse was 87. He weighed 205 pounds and was 5' 9" tall. He was awake, alert, and coherent. His speech was fluent and he comprehended multi-step commands well. Recent and remote memory appeared intact. The claimant was attentive with good concentration and fairly good knowledge about the medical problem and insight to the medical history. His cranial nerves, there was a narrowing of the palpebral fissure on the right. Facial movements were mildly decreased with nasal labile fold on

the right. Remaining cranial nerves II through XII were normal. Facial movements and sensations were fairly symmetric. Tongue and palatal movements were normal. Fundi were normal. Pupils responded symmetrically. There was no other sign of meiosis. Extraocular movements were full. Visual fields were full to confrontation. Pupils were reactive and fundi were grossly normal. There was no nystagmus. Facial sensations were normal. Facial movements were symmetric. Hearing was grossly normal. There were normal palatal movements. Gag reflex was normal. Shoulder shrug was symmetric. Tongue protruded in the midline. The motor examination showed normal tone and strength. Deep tendon reflexes were symmetric. There was no spasticity. There was no resting or action tremor. Plantar reflexes were downgoing. There was no pronator drift. In coordination, finger-to-nose testing and heel-shin-knee testing was normal. Rapid alternating movements were fair. In the sensory, touch, pain, pinprick, and perception were normal. There was no ataxia or incoordination. The gait examination revealed a normal stance and cadence. No ataxia was noted. General examination, cardiac sounds S1 and S2 were normal. There was no carotid bruit. There was no pedal edema noted. The abdomen was soft and non-tender. There were no cervical lymph nodes palpable. (p. 91) The impression was that claimant had some right facial numbness which was mostly resolved. Most of his symptoms were chronic from previous injuries, trauma, and a questionable CVA. His recent MRI of the brain did not show any significant otherwise white matter lesions or MS related features. He was advised to use an aspirin a day and secondary stroke preventions with cessation of smoking, blood pressure control, etc. (p. 92)

Claimant testified on the record that he does cook and grocery shop one time per month, and he usually needs help going to get things. Claimant testified that he does clean his home by vacuuming and doing dishes. Claimant can walk two and a half blocks, stand for fifteen to

twenty minutes at a time and sit thirty to forty-five minutes at a time. Claimant is able to shower and dress himself and he is able to tie his shoes, but not touch his toes. Claimant stated that he cannot bend because his knee hurts and that he is able to bend at the waist. Claimant testified that the heaviest weight he can carry is ten to twenty-five pounds and he can repetitively carry five pounds. Claimant testified that he is right-handed and his right side is slightly weak. Claimant testified that his level of pain on a scale from one to ten without medication is a ten in his back and knees and with medication is a three to a four. Claimant testified that he does continue to smoke four cigarettes a day and his doctor has told him to stop and he is not in a smoking cessation program. Claimant testified that he stopped taking marijuana and cocaine when he had a stroke. Claimant testified that in a typical day he gets up and eats, sits and watches television, and doesn't sleep regular hours.

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 insufficient corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. The DHS-49, Medical Examination Report, in the file indicates that claimant was expected to return to work [REDACTED], and he could sit less than six hours in an eight-hour day and could lift ten pounds and could his upper extremities of any repetitive action and he could his left leg for operating foot and leg controls. Claimant had no mental limitations at that time. 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, the 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.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers mental limitations resulting from his reportedly depressed state. 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. 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 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. 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. Claimant has worked as an audiovisual technician and assistant manager in a restaurant. Neither position requires strenuous physical exertion. There is insufficient objective medical/psychiatric evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work which he has engaged in, in the past. Therefore, if claimant had not already been denied at Step 2, he would again be denied 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. The claimant's testimony as to his limitations indicates that he should be able to perform light or sedentary work.

The Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) is material to a person's disability and when benefits will or will not be approved. The regulations require the disability analysis be completed prior to a determination of whether a person's drug and alcohol use is material. It is only when a person meets the disability criterion, as set forth in the regulations, that the issue of materiality becomes relevant. In such cases, the regulations require a sixth step to determine the materiality of DAA to a person's disability.

When the record contains evidence of DAA, a determination must be made whether or not the person would continue to be disabled if the individual stopped using drugs or alcohol. The trier of fact must determine what, if any, of the physical or mental limitations would remain if the person were to stop the use of the drugs or alcohol and whether any of these remaining limitations would be disabling.

Claimant's testimony and the information indicate that claimant has a history of tobacco and alcohol abuse. Claimant 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).

In addition, in 1996 Congress amended the Social Security Act to preclude the award of SDI and SSI benefits when alcoholism or drug addiction materially contributes to the claim of disability. An individual should not be considered to be disabled per purposes of this title if alcoholism or drug addiction would be a contributing factor material to the determination that the person is disabled. Public Law 104-121, Section 105(b)(1), 110 STAT. 853, 42 USC 423(d)(2)(C), 1382(c)(a)(3)(J) Supplement V, 1999.

Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to claimant's ability to perform work. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity. Claimant is disqualified from receiving disability at Step 5 based upon the fact that he has not established by objective medical evidence that he cannot perform light or sedentary work even with his

impairments. Under the Medical-Vocational guidelines, a younger individual (age 42), with a high school education and an unskilled work history who is limited to light work is not considered disabled.

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: December 18, 2009

Date Mailed: December 21, 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.

2009-26909/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:

