

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: 2009-12830
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 29, 2009
Macomb 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, a telephone hearing was held on April 29, 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 June 22, 2007, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.
- (2) On November 7, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical-Vocational Rule 202.20.

(3) On November 17, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On November 19, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On February 26, 2009, the State Hearing Review Team again denied claimant's application stating in its decision: that claimant is capable of performing other work in the form of light work per 20 CFR 416.967(b) and unskilled work per 20 CFR 416.968(a) pursuant to Medical-Vocational Rule 202.20. The State Hearing Review Team commented that this may be consistent with past relevant work. However, there is no detailed description of past work to determine this. In lieu of denying benefits as capable of performing past work a denial to other work will be used.

(6) The hearing was held on April 29, 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 May 1, 2009.

(8) On May 12, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing past work as a meter reader and stated in its comments that a vocational rehabilitation evaluation was submitted for review. This evaluation indicated that the claimant was functionally illiterate. However, it is noted that the claimant actually has significant relevant work history. The objective physical findings showed no evidence of neurological abnormalities. There is no muscle wasting or atrophy. The claimant was able to walk without assistance. Based on the information in the file, the claimant would be capable of doing light work and could return to his past work as a meter reader.

(9) Claimant is a 47-year-old man whose birth date is [REDACTED]. Claimant is 5' 10" tall and weighs 265 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills but claimant stated that he is dyslexic and long division is hard for him.

(10) Claimant last worked in 2007 reading meters for [REDACTED] where he worked for 13 years. Claimant was also a meter reader for [REDACTED] and also worked at [REDACTED] as a bagger in the molding factory. Claimant received a settlement for Worker's Compensation in the amount of [REDACTED]. Claimant testified that his attorney got one-third and that [REDACTED] of the money went to Blue Care Network and he got [REDACTED] in total settlement monies.

(11) Claimant alleges as disabling impairments: a bad back, pain in the neck, and has a titanium plate with four screws in his neck.

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 in the file indicates that claimant's clinical impression is that he is stable. Claimant does have some physical limitations. Claimant can occasionally lift less than 10 pounds and never lift 10 pounds or over. Claimant can stand or walk less than two in an eight hour workday and can sit less than six hours in an eight hour workday. Claimant can use his upper extremities for simple grasping, reaching and fine manipulating, but not pushing/pulling. Claimant can operate foot and leg controls with both feet and legs. The medical findings are that claimant has disc protrusions at C6-C7, C5-C6, and C4-C5 and L3-L4 and L4-L5 and that claimant has degenerative disc disease. Claimant's mental limitations are that claimant has dyslexia and he has had migraine headaches and that affects his sustained concentration abilities. (Page 4) On [REDACTED], claimant was 5' 10" tall and weighed 260 pounds. His blood pressure was 149/84 and he was right hand dominant. Claimant was diagnosed with cervical radiculopathy, lumbar radiculopathy and degenerative disc disease. Claimant was alert, awake and oriented to time, person and place. Claimant had some mild neurological weakness and he had an antalgic gait. Lumbar and cervical spinous process has some tenderness and range of motion decrease in cervical spine and occasional numbness and tingling in his legs. Claimant had an obese abdomen and it was non-tender. His cardiovascular was S1 and S2+ and his chest was clear to auscultation and he had sleep apnea. (Page 5) A [REDACTED] medical examination indicates that claimant was 5' 8" tall and weight 254 pounds. He was alert and oriented to time, person and place. His pulse was 99, his respiratory rate was 18. His blood pressure was 155/87, and 152/85. His visual acuity without eyeglasses was 20/20 on the right and 20/25 on the left. His HEENT: he was normocephalic/and atraumatic. His eyelids were normal. There was no exophthalmos, icterus, conjunctival erythema or exudates noted. PERRLA. His extraocular movements were intact.

Ears: there was no discharge in the external auditory canals. No bulging, erythema, perforation of the visible portion of the tympanic membrane noted. Nose: there was no septal deformity, epistaxis or rhinorrhea. His teeth were in fair repair. There were no ulcerations of the tongue or throat. No gingivitis. His neck was supple. No JVD noted. No tracheal deviation. No lymphadenopathy. No accessory muscle usage. Thyroid was not visible or palpable. Skin: there was no significant skin rash, dermatitis or ulcers. Neurological: higher function – claimant was alert and oriented x3. Cranial nerves II-XII were intact. Motor function – the claimant had no evidence of focal muscle atrophy in the right or left upper or lower extremity. Muscle tone was normal in all extremities. Muscle strength was generalized 5/5. Deep tendon reflexes – biceps, triceps and brachioradialis, knee and ankle jerks are 2+. Hoffman’s negative. Babinski is downgoing. No evidence of knee or ankle clonus. Sensory: no evidence of neurosensory deficit in both upper and lower extremities at the present time. Cerebellar exam – the claimant was able to finger-to-nose test. There was no evidence of cerebellar ataxia. Romberg was negative. Coordination was intact. Musculoskeletally: cervical spine – there was a flattening of the cervical lordosis. Range of motion of the cervical spine was done. There was tenderness. There was no muscle spasm. Spurling’s maneuver was unable to be elicited due to cervical laminectomy. Thoracic spine – there was mildly increased kyphosis. In the upper extremity there was no significant muscle atrophy. Tone and strength were symmetrical. Range of motion of the shoulder, elbows, wrists and hands were done. Lumbar spine – there was flattening of the lumbar lordosis. There was no muscle spasm. No tenderness. Range of motion of the lumbar spine was done. Straight leg raising was negative. Lower extremity exam was normal. Functional: upper extremities – the claimant was able to get dressed, button clothing, tie his shoelaces, pick up a coin, pick up a pencil and write. Lower extremities – the claimant was able to ambulate without a

cane with a normal gait pattern. Unable to heel walk, toe walk. Able to tandem walk. The claimant can sit and stand. Unable to bend, stoop, carry, push and pull. Unable to squat and arise. The impression was that claimant was status post cervical laminectomy and fusion with cervical lumbar myositis. (Page 25)

A MRI of the cervical spine indicated there was evidence of disc protrusion centrally/right paracentrally at the C6-C7 level effacing the thecal sac. There was diffuse bulging disc/degenerative changes noted in the C5-C6 level, effacing the anterior thecal sac and origin of the right fifth foraminal canal. There was also diffuse bulging disc centrally/right paracentrally is noted in the C4-C5 level with effacement of the thecal sac. (Page 3)

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 objective clinical medical evidence in the record that claimant suffers from degenerative disc disease and problems with his back and neck. However, there is insufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. The medical forms indicate that assistive devices are not medically required or needed for ambulation. There is an opinion that claimant can sit for six hours out of eight in a workday and can walk for two hours out of a workday. The clinical impression 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, 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.

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 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 was oriented to time, person and place during all of his medical reports. 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. This Administrative Law Judge finds that claimant could probably work as a bagger at [REDACTED]

or reading meters at [REDACTED] even with his impairments. Neither job requires strenuous physical exertion and there is insufficient objective medical evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work that 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.

Claimant testified on the record that he does have a driver's license and does drive everyday one to two miles and usually drives to the store and to church. Claimant is single and lives in a mobile home and he lives alone. Claimant testified that he does cook one to two times per day and cooks things like spaghetti, macaroni and cheese and chicken and that he grocery shops three times per month with no help. Claimant does clean his home by doing dishes, laundry and one time a week he vacuums. Claimant testified that he belongs to the [REDACTED] [REDACTED] and ushers at church one time per week for one hour at a time. Claimant testified that he watches television and goes to church every Sunday and goes to everyday mass. Claimant testified that he can walk for 20 minutes at a time, stand for 20 minutes at a time and sit for 2 hours at a time. Claimant testified that he is able to shower and dress himself, but cannot squat because of his big belly and he can't bend over because of pain. Claimant testified that he kneels down to tie his shoes. Claimant testified that he can carry 10 pounds and that he is right handed and his hands, arms, legs and feet are fine. Claimant stated that his level of pain on a scale from 1 to 10 without medication is a 9 and with medication is a 7. Claimant testified that in a typical day he gets up and uses the bathroom and brushes his teeth and then gets dressed and goes to church. He watches television eight hours a day and makes his meals.

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/psychiatric 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. This Administrative Law Judge finds that 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. This Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity.

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. Claimant is disqualified from receiving disability at Step 2, Step 3, Step 4 and Step 5.

Accordingly, the department's decision is AFFIRMED.

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

Date Signed: June 10, 2009

Date Mailed: June 11, 2009

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

LYL/vmc

cc:

