

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: 2009-16815
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 21, 2009
Ingham 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 May 21, 2009. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED].

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and retroactive Medical Assistance (retro MA-P)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

(1) On August 29, 2008, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.

(2) On November 17, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On November 24, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On February 19, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On April 13, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of sedentary work per 20 CFR 416.967(a) pursuant to Medical-Vocational Rule 201.21 and 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 based on a Vocational Rule will be used.

(6) The hearing was held on May 21, 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 April 24, 2009.

(8) On June 3, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The claimant's treating doctor gave no lifting over 20 pounds limitations and sedentary work. (Page 27) The newly submitted evidence does not significantly or materially alter the previous recommended decision. The collective medical evidence shows that the claimant is capable of performing light work. The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of

light work. Therefore, based on the claimant's vocational profile of a younger individual, fourteen years of education and a history of unskilled work, MA-P is denied using Vocational Rule 201.21 as a guide. Retroactive MA-P was considered in this case and is also denied.

(9) Claimant is a 47-year-old man whose birth date is [REDACTED]. Claimant is 5' 10" tall and weighs 270 pounds. Claimant testified he recently gained 60 pounds. Claimant is a high school graduate and is five credits short of Bachelor of Arts degree in law enforcement and security council from [REDACTED].

(10) Claimant last worked November 14, 2007 as a heavy machine operator and mechanic. Claimant has also worked as a sales, installation and trouble shooter for a dish network and as a diner in a machine tool and die stamping company. Claimant has also worked as a security analysis driving a money truck and fixing ATM machines. Claimant was also in the [REDACTED] for eight years as a MP investigator.

(11) Claimant alleges as disabling impairments: diabetes mellitus, hypertension, coronary artery disease, asthma, back pain, L4-L5 ruptured disc, type 3 heart stoppage, neuropathy and hip and leg 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 November 2007. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that on [REDACTED], claimant was admitted to [REDACTED]. Cardiac enzymes were negative. He was in sinus rhythm and asymptomatic. His left ventricular function was 64%. A 2-D echocardiogram was also performed which demonstrated normal left jugular function and trace tricuspid and mitral valve insufficiency. He was monitored on telemetry during his hospitalization and no significant arrhythmias were found. He has a previous history of atrial fibrillation on an EKG performed in [REDACTED], however, has not had any documented since then. A 30-day event recorder was ordered at that time. (Page A2)

A Medical Examination Report dated [REDACTED] indicates that claimant was normal in the mental status and in his general appearance, but had an antalgic gait and low back pain. Claimant was 70-1/2" tall and weighed 285 pounds. His blood pressure was 130/80. (Page A8) The clinical impression was that claimant was deteriorating. Claimant could occasionally lift 20 pounds or less but never lift 25 pounds or more. Claimant could stand or walk less than two hours in an eight hour day and sit less than six hours in an eight hour day. Claimant could use both upper extremities for doing simple grasping, reaching, pushing/pulling and fine manipulating, but could not operate foot or leg controls with either feet or legs. Claimant had no mental limitations. (Page A9)

Claimant had a cardiovascular stress test done on [REDACTED] which was terminated due to claimant developing hip pain. The claimant experienced no symptoms during stress. The claimant underwent cardiovascular stress testing on a motorized treadmill going to a level of 6 METS with a heart rate rise to 130 beats per minute and a maximum blood pressure of 166/88.

Pre-exercise blood pressure was 142/88. Claimant experienced occasional PVC. There was an indeterminant (failure to achieve 85% of maximal heart rate) exercise electrocardiogram to 6 METS with no remarkable ECG changes in an individual who has level of exercise tolerance for age. (Page A20)

An [REDACTED] medical report indicates that claimant was 70" tall and his blood pressure was 139/87. His pulse was 72 beats per minute. Claimant was well-developed, well-nourished, in no apparent distress. Claimant's eyelids and conjunctiva were normal. Pupils and irises were normal. Claimant had normal external ears and nose. His hearing was grossly normal. His nose had normal nasal mucosa, septum, turbinates and sinuses. Lips, teeth and gums were normal. Oropharynx showed normal mucosa, palette and posterior pharynx. The neck was supple with full range of motion. Normal respiratory rate and pattern with no distress, normal breath sounds with no rales, rhonchi, wheezes or rubs. In the cardiovascular area, normal rate and rhythm without murmurs; normal S1 and S2 sounds with no S3, S4 rubs or clicks; carotid; 2+ amplitude, no bruits; 2+ pedal pulses; no edema or significant varicosities. In the lymphatic system there was no enlargement of cervical nodes; no axillary adenopathy. Musculoskeletally, there was no clubbing, cyanosis or evidence of ischemia or infection; normal gait; tone and strength; 4/5 in the left hip flexors; 4/5 in the left ankle dorsi flexors; full, painless range of motion of all major muscle groups and joints with no laxity or subluxation of any joints. Neurologically, normal DTR's elicited in biceps, triceps, supinator, knee and ankle jerk; sensation; normal to touch and pinprick; vibration and proprioception senses intact. Mental status was alert and oriented x3; appropriate affect and demeanor; recent and remote memory intact. MRI and CT results showed that the lumbar-sacral spine was post myelo CT showed no sign of nerve root impingement. The assessment was lumbar spinal stenosis. (Page A22, A23)

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 clinical impression is that claimant is deteriorating; however, 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 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 not have any mental limitations.

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 no evidence in the record indicating claimant suffers mental limitations. 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 past relevant work. This Administrative Law Judge finds that claimant could probably drive a money truck or fix an ATM machine even with his impairments. 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.

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. The claimant's testimony as to his limitations indicates that he should be able to perform light or sedentary work.

Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to claimant's ability to perform work. Claimant did testify that he does receive relief from his pain medication. Claimant testified that he does smoke one to two cigarettes per week and that his doctor has told him to quit and he is not in a smoking cessation program. This Administrative Law Judge finds that claimant is not in compliance with his treatment program if his doctor has told him to quit smoking and he continues to do so.

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).

This Administrative Law Judge finds that claimant is not disabled for purposes of Medical Assistance benefits.

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: July 22, 2009

Date Mailed: July 22, 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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