

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: 2009-24732

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

July 22, 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 July 22, 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 August 12, 2008, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.

(2) On January 2, 2009, the Medical Review Team denied claimant's application stating that claimant's impairments were non-severe.

(3) On January 6, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On February 23, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On June 16, 2009, the State Hearing Review Team again denied claimant's application stating that claimant's impairments were non-severe pursuant to 20 CFR 416.920(c).

(6) The hearing was held on July 22, 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 August 10, 2009.

(8) On August 11, 2009, the State Hearing Review Team again denied claimant's application stating that claimant's impairments were non-severe per 20 CFR 416.920(c) and commented that the new information submitted does not significantly change or alter the previous decision. The information submitted was an MRI from 2006 and the rest of the information was actually bills and not objective medical evidence.

(9) Claimant is a 50-year-old man whose birth date is [REDACTED]. Claimant is 6' 1" tall and weighs 146 pounds. Claimant recently lost 30 pound. Claimant has an 8th grade education and no GED. Claimant was in special education for reading and is able to read and write and does have basic math skills.

(10) Claimant last worked for [REDACTED] in 2000 as an electrician. Claimant has also worked as an electrical apprentice and as a steel worker.

(11) Claimant alleges as disabling impairments: chest discomfort, leg pain, broken right knee, left foot, and bad back in 2001 and arthritis.

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 2000. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a [REDACTED] MRI indicates that claimant had low back pain, a medial meniscal tear, degenerative changes, and patellar tendinosis. Claimant had loss of disc space height and hydration at C3/4, C4/5, C5/6, and C6/7. End plate spurring and disc bulging was seen at C4/5 and C5/6 interspaces. There was effacement of the anterior CSF space at C4/5, C5/6, and C6/7 and there was a focal disc herniation centrally and to the left at C5/6 level. This causes some deformity of the anterior left aspect of the cord. Neural foraminal compromise was present bilaterally at C4/5, C5/6, and C6/7. No additional abnormalities were seen. The impression was degenerative disc disease including a small disc herniation to the left at C5/6. (p. 1 of the new information)

A consultation note of [REDACTED] indicates that the impression was chest pain, atypical presentation with atypical features. Negative for acute coronary syndrome, myocardial infarction

with no ischemia on stress. Acute and chronic alcohol abuse with alcohol level at admission of 0.273. Chronic tobacco abuse. Reactive depression and protein-calorie malnourishment. EKGs and cardiac enzymes were unremarkable x2 sets and no evidence of ischemia on stress at adequate workload at 87% of age predicted maximal heart rate and 5.6 mets. From a cardiovascular standpoint, the claimant may be discharged from a cardiac standpoint with follow-up of outpatient social work evaluation for alcohol cessation. Claimant was given counseling regarding alcohol cessation and follow-up into an AA program. Replacing electrolytes. Adequate nutrition and risk factor modification with tobacco cessation. The physical examination on that day was blood pressure was 124/62, pulse 68, respiration rate 18, temperature 97.9 degrees, room saturation on air 99%. He was 185 centimeters tall. He was awake, alert, appropriate, appeared older than his stated age, disheveled with poor hygiene, with smelling of alcohol. HEENT was positive for conjunctival hemorrhages. No arcus. Ear creases were noted. The neck was without jugular venous pressure elevation or carotid bruits. The heart revealed S1, S2, regular without gallop, rub, or murmur. The lungs were clear and diminished in the bases. The abdomen was soft and cachectic scaphoid without rebound or guarding. The extremities were without edema. Pulses were +1/4 dorsal pedal and equal bilaterally. The electrocardiogram showed underlying sinus rhythm with otherwise normal-appearing EKG. The laboratory count was hemoglobin 14, hematocrit 41, white count 4.5 thousand, with a platelet count of 265 with macrocytic indices. Random glucose 93, BUN 5, creatinine 0.6, sodium 140, potassium 4.1, chloride 103, CO2 20, anion gap of 12, HDL 89, LDL 54, total cholesterol of 157. INR 1.07, urinalysis unremarkable. (p. 32) A chest x-ray done on July 21, 2008, the impression was hyperinflated lungs with no acute interval changes otherwise seen. The cardiac silhouette and pulmonary vasculature appeared normal. The lungs were clear but appeared mildly

hyperinflated. There were no pleural abnormalities. The osseous structures, as viewed, remain unchanged with an old fracture deformity seen involving the right clavicle with old healed rib fractures on the left. (p. 34)

A cardiology consultation of [REDACTED] indicates that the claimant was a well-developed, well-nourished, adult male who was alert, cooperative, and no acute distress. The vital signs were stable, neck carotid pulses were 2+ without bruits. Jugular venous pressure appeared normal. Lungs were clear. Heart precordial examination showed regular rhythm, normal heart sounds, no murmur or gallop. Abdomen was benign. Extremities were normal, symmetrical peripheral pulses, no evidence of peripheral edema. The assessment was coronary artery disease and the doctor's statement was that claimant has a known history of an extremely strong risk profile for coronary artery disease including his family history and active cigarette smoking. (p. 35)

A Medical Examination Report in the file of [REDACTED] indicates claimant was normal in areas of examination. He had some hoarseness of voice and throat discomfort.

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. There is no clinical impression that claimant is deteriorating. 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 testified on the record that he does not have any mental limitations. There is no evidence in the record indicating claimant suffers mental limitations resulting from his condition. Claimant testified that he does not have any mental impairment. 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. 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 finds that claimant could possibly do his prior work as an electrician even with his impairments. If claimant were to refrain from smoking and drinking, he could probably perform work which requires more strenuous physical exertion. However, there is insufficient objective medical evidence in the file 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. 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.

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 testified on the record that he smokes a pack of cigarettes per day and his doctor has told him to quit and he is not in a smoking cessation program and he does occasionally drink

twelve beers and his doctor has told him to quit. Claimant testified that he usually sits at home and that he used to like to hunt and fish but he can't afford to and the last time he went was five years ago. Claimant testified he can walk 40 yards, stand for 20 minutes, and sit for 20 minutes at a time. Claimant testified that he can shower and dress himself but not tie his shoes or touch his toes and that he can't bend at the waist or squat because of his back. Claimant testified that the heaviest weight he can carry is 15 pounds repetitively and he is right-handed and he has no strength in his hands and arms. Claimant testified his level of pain on a scale from 1 to 10 without medication is a 9 and with medication is a 5/6. Claimant's testimony and the information contained in the file indicate claimant has a history of alcohol and tobacco abuse. Applicable hearing is the Drug Abuse and Alcohol (DA&A) Legislation, Public Law 104-121, Section 105. The law indicates that individuals are not eligible and/or are not disabled where drug addiction or alcoholism is a contributing factor material to the determination of disability. After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that the claimant does not meet the statutory disability definition under the authority of the DA&A Legislation because his substance abuse is material to his alleged impairment and alleged disability.

Claimant is not in compliance with his treatment program because he does continue to smoke and drink despite the fact that his doctor has told him to quit.

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).

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.

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: September 23, 2009

Date Mailed: September 24, 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.

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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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