

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: 2009-26037  
Issue No: 2009  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
August 11, 2009  
Wayne 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 August 11, 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 February 19, 2009, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.

(2) On April 10, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On April 13, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On May 5, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On June 26, 2009, the State Hearing Review Team again denied claimant's application stating that claimant's impairments lacked duration per 20 CFR 416.909.

(6) The hearing was held on August 11, 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 October 6, 2009.

(8) On October 8, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing unskilled, light, one-handed work pursuant to 20 CFR 416.967(b) and unskilled work per 20 CFR 416.968(a) pursuant to Medical-Vocational Rule 202.17 and 202.24 as guides.

(9) Claimant is a 42-year-old man whose birth date is [REDACTED]. Claimant is 5' 11" tall and weighs 198 pounds. Claimant attended the 10<sup>th</sup> grade and has no GED and stated that he was in special education for Reading and Spelling. Claimant is able to add, subtract, and count money and stated that he cannot read well.

(10) Claimant last worked July 11, 2008 as a self-employed siding and window installer. Claimant did that job for approximately 32 years.

(11) Claimant alleges as disabling impairments: amputated two fingers on the left hand, hypertension, back pain, knee problems, a stent in his heart, blocked arteries, cardio obstructive pulmonary disease, and lower back problems at L1-L2.

### 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 July 11, 2008. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that pursuant to a [REDACTED] examination of [REDACTED], claimant was 68" tall and weighed 195 pounds. His pulse was 92 per minute and his respiratory rate was 16 per minute. His blood pressure was 132/84. Vision without glasses was 20/50 in the right eye and 20/70 in the left eye and near vision was 13/30 in the right eye and 13/25 in the left eye. Claimant does not wear glasses. HEENT: Pupils were equal and reactive. There was no jaundice or pallor. There was no throat redness. Neck was soft and subtle. There was no thyromegaly or lymphadenopathy. There were no carotid bruits or jugular venous distention. LUNGS: There were coarse breath sounds

with occasional scattered rhonchi that cleared on coughing. There was no bronchial breathing. Percussion was normal. Anterior and posterior diameter of the chest wall was normal. There was no cyanosis or clubbing noted. No accessory muscles of respiration were used.

**CARDIOVASCULAR:** First and second heart sounds rhythm was regular. Peripheral pulses were palpable. Legs did not show pitting edema. No calf tenderness was noted. **ABDOMEN:** Soft and non-tender. There was no rebound, guarding or hepatosplenomegaly. Bowel sounds were positive. **NEUROLOGICAL:** The claimant was alert, awake and oriented. Speech was normal. Cranial nerves III through XII appeared intact. Power was 5/5 in all four limbs. The claimant could not make a fist or grip anything with the left hand. Gait was normal. No assistive devices were needed for ambulation. The claimant could not walk on heels and toes. He could not squat down. Deep tendon reflexes were intact and symmetrical in the upper and lower extremities bilaterally. Muscle bulk and tone were normal in the upper and lower extremities bilaterally. **MUSCULOSKELETAL:** Hand on the left side showed a deformity on the distal third finger with signs of previous surgery. There was also a surgical scar on the second finger. The claimant was not able to make a fist at all and had very limited movement of the second and third fingers. There also was stiffness of the fourth and fifth fingers. He was unable to flex them. Wrists bilaterally did not show any swelling, redness, or tenderness. Range of motion was normal. Elbows bilaterally did not show any swelling, redness, or tenderness. Range of motion was normal. Shoulders bilaterally showed tenderness on palpation with decreased range of motion due to pain. Cervical spine did not show tenderness or spasms. Range of motion was normal. Lumbosacral spine showed tenderness of palpation with decreased range of motion due to pain. Hips bilaterally did not show any redness, swelling, or tenderness. Range of motion was normal. Knees bilaterally showed tenderness of palpation on the medial and left lateral aspect

with no redness, heat, or swelling. There was no joint effusion. There was decreased range of motion due to pain. Ankles did not show any redness, swelling, or tenderness. Range of motion was normal. The assessment was hypertension, cardio obstructive pulmonary disease, coronary artery disease status post coronary stent, carotid stenosis, depression, osteoarthritis with knee pain, hand pain, and shoulder pain, injury to left hand as mentioned with traumatic amputation of third finger and injury to second finger requiring surgery, back pain, hyperlipidemia, and GERD. (pp. 115-118)

A Medical Examination Report in the file dated [REDACTED] indicates that claimant was 5' 11' and weighed 202 pounds. His blood pressure was 128/88. The clinical impression of claimant was that he was stable and that he had no physical limitations and assistive devices were not medically required or needed for ambulation. He could do simple grasping, reaching, pushing/pulling, and fine manipulating with both upper extremities and could operate foot and leg controls with both feet and legs as of a [REDACTED] cardiology report.

In [REDACTED], claimant had a comminuted fracture of his third middle phalanx with soft tissue injury. There was a faint radiolucency at tip of probably the second distal phalanx suggestive of a small chip fracture of unknown duration. On physical examination, claimant was pleasant, alert, oriented, and in no acute distress. His vital signs were stable. His HEENT was normocephalic and atraumatic. Sclerae were clear. Oral mucous membranes were moist. The neck was supple. No jugular venous distention. No carotid bruit. Lungs were clear to auscultation. Heart had normal first and second heart sounds. No murmurs, gallops, or friction rub. The abdomen was non-tender and in the extremities the left hand was wrapped because of an injury and amputation of the fingers. An electrocardiogram revealed normal sinus rhythm. (pp. 107-108)

On [REDACTED], claimant was admitted to the hospital because he fell from a ladder and lost consciousness. On physical examination, he was pleasant, alert, oriented, and in no acute distress. His vital signs were blood pressure 125/73, heart rate 65, respirations 16, and saturation was 96% on room air. HEENT was normocephalic and traumatic. Sclerae were clear. Oral mucous membranes were moist. The neck was supple. No jugular venous distention. No carotid bruit. Lungs were clear to auscultation. Heart had normal first and second heart sounds, regular rate and rhythm. No murmur or friction rub. The abdomen was non-tender. The extremities were without edema. Pedal pulses were 2+ bilaterally. Skin was warm and dry. Claimant was discharged September 11, 2008. (pp. 47-48)

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 testified on the record that he does not have any mental impairment. Claimant has reports of pain in his back and in his hands. Claimant testified on the record that he does have a driver's license and he does drive to his doctor's appointments two times per week and usually drive about thirty miles one way. Claimant does grocery shop every week with no help. He does clean his home by dusting and vacuuming. Claimant testified that he can walk a half a block, stand for twenty minutes at a time, and sit for twenty minutes at a time. Claimant testified that he cannot squat because of his back but he can bend slightly, but not tie his shoes or touch his toes. Claimant testified that the heaviest weight he can carry is a gallon milk and that he is right-handed and that he cannot button his own pants because of the injury to his left hand. Claimant testified that his hand on the right side is fine except that he does have carpal tunnel syndrome. Claimant testified that his

level of pain on a scale from one to ten without medication is a seven and with medication is a four to a five. Claimant testified that he quit smoking in February 2009, but he used to smoke a half a pack of cigarettes per day. Claimant testified that in a typical day he helps around the house and paces the floor and sits. He does the same thing everyday since he lost his fingers. Claimant testified that he was hospitalized in [REDACTED] when he cut his fingers off for four days and in [REDACTED] when he had a stent placed in his heart.

The clinical impression in this case is that claimant is stable. In addition claimant's only impairment at this current time is the fact that he injured his left hand. This is not claimant's dominant hand. The DHS-49, Medical Examination Report, indicates that there are no assistive devices medically required or needed for ambulation. Claimant has no physical or mental limitations established in the medical report. 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. Although claimant did have a severe injury to his hand, this does not prevent him from performing all work. Therefore, this Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical or 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.

At Step 4, this Administrative Law Judge finds that claimant could probably not currently perform his prior work installing siding and windows because he does need both hands to do that and it does require strenuous physical exertion. Claimant is not disqualified from receiving disability 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).

Examples of light or sedentary (one-handed), unskilled jobs that claimant can do: are an usher, counter clerk, surveillance system monitor and a furniture/rental consultant in a retail business. County business patterns show that over 751,000 workers are employed in Michigan retail industries, indicating that such jobs exist in significant numbers in this region's economy. Over 30,000 workers are employed in Michigan in amusement and recreational services in which usher jobs are prevalent. Over 15,000 people are employed in public transportation and over 127,000 are employed in general merchandise stores, photo finishing, laboratories and photography supply stores, indicating such jobs exist in significant numbers in this region's economy.

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 does not retain bilateral manual hand dexterity but should be able to do simple, unskilled, light, one-handed work even with his impairments. The claimant's testimony as to his limitations indicates 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 on the record that he does receive some relief from his pain

medication. 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. Under the Medical-Vocational guidelines at 202.17 and 202.24, 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.

2009-26037/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:

