

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: 2009-29205
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 10, 2009
Bay County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, an in-person hearing was held on September 10, 2009. Claimant personally appeared and testified. 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 January 6, 2009, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.

(2) On March 12, 2009, the Medical Review Team denied claimant's application stating that claimant's impairments lacked duration.

(3) On March 18, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On June 15, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On July 23, 2009, the State Hearing Review Team again denied claimant's application stating that claimant's impairments lacked duration.

(6) Claimant is a 48-year-old man whose birth date is [REDACTED]. Claimant is 5' 11" tall and weighs 305 pounds. Claimant is a high school graduate and attended vocational school studying auto service. Claimant is able to read and write and does have basic math skills.

(7) Claimant last worked January 2007 as a counter parts person at [REDACTED]. Claimant has also worked doing machine work in prior years.

(8) Claimant last received unemployment compensation benefits shortly before the hearing.

(9) Claimant alleges as disabling impairments: diabetes mellitus, kidney stones, acid reflux, degenerative joint disease, degenerative disc disease, sleep apnea, arthritis in his back, neuropathy in feet and fingers, hypertension, and memory loss.

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

In order to be eligible for unemployment compensation benefits, a person must be able to work and available to work as defined by law. In the instant case, the claimant was receiving unemployment compensation benefits until shortly before the hearing. A person who is receiving unemployment compensation benefits must be ready, willing, and able to accept any suitable work. They must make reasonable efforts to find employment each week. In the instant case, to receipt unemployment compensation benefits precludes claimant from receiving disability.

The objective medical evidence on the record indicates that on [REDACTED], claimant was admitted to the hospital and found to have a six millimeter right ureteral colic. Cystoscopy and laser lithotripsy was done. Claimant was feeling better and his hospital course was otherwise unremarkable. On physical examination his vitals were 102/62, pulse 97, respirations 20, temperature 97.6. His HEENT was unremarkable with no conjunctivitis. No thrush. Neck was supple. Lungs were clear to auscultation. CVS: S1 and S2 audible, regular rate and rhythm. Abdomen was obese, morbid, soft, and non-tender. Bowel sounds were positive. The extremities had no edema and no calf tenderness. Claimant was discharged home two days after his admission in good condition. (p. 72)

A letter from claimant's doctor dated [REDACTED] indicates that claimant suffers from severe vertigo, diabetes, severe pain secondary to diabetic neuropathy, GERD with some dysphagia. The doctor indicated that she believed that the claimant was disabled. (Claimant Exhibit A-1)

An [REDACTED] office visit indicates that claimant's objective findings were that his weight was 315 pounds, his blood pressure was 118/60, and his pulse was 80. His general appearance appeared tired and in no distress. There was no ocular discharge. TM's were pearly with normal anatomy bilaterally. Nares were patent. Oropharynx was clear with moist mucous membranes. The neck was supple without significant adenopathy, fleshy overweight neck. Cardiac, there was regular rate and rhythm, S1 and S2, no murmur. Lungs were clear to auscultation bilaterally. No wheezes, rhonchi, or rales. The diabetic foot exam revealed the bilateral feet were warm and dry with no lesions noted. Neurosensory was severely decreased bilaterally. Pulses were palpable and equal bilaterally. Capillary refill was less than three seconds. Toenails were normal. (p. 37)

Updated medical in [REDACTED] indicates that claimant was at the doctor's office for a routine follow-up. He weighed 313 pounds. His blood pressure was 124/80. His pulse was 72. He had a regular heart rate and rhythm with no murmurs. Lungs were clear to auscultation bilaterally. No wheezes, rhonchi, or rales. Bilateral feet were warm and dry. No lesions noted. Neurosensory was severely decreased bilaterally, edema, palpated bilaterally, pulses palpable and equal bilaterally, capillary refill less than three seconds. Toenails were normal. He was assessed with chronic neuropathy, hypertension, insomnia, and suspected sleep apnea. (p. 42)

A [REDACTED] examination indicates that claimant was 314 pounds. His temperature was 98.6. Blood pressure was 110/60. Oxygen saturation was 99% on room air. Claimant appeared fatigued but was alert and oriented to person, place, and time. There was no slurred speech evident. His heart rate was regular and rhythm was without murmur, rub, or gallop. He did have bilateral pedal edema but it appeared non-pitting at that time. Lungs were clear to auscultation bilaterally without audible wheeze or rhonchi. Expansion appeared good and percussion was difficult to appreciate because of his body habitus. He did have slight nystagmus and vertigo that is initiated with extreme ocular movements. Grip strength was slightly less than normal in both hands. Pulse and circulation were intact with both hands. There appeared to be no acute neurovascular compromise. There did not appear to be any significant gait abnormality and Romberg's was negative. EKG done in the office today was abnormal showing left atrial abnormality and left ventricular hypertrophy. No Q waves or significant ST elevations noted and no T wave inversion. There was no prior EKG for comparison in the chart. The claimant has never had a cardiovascular workup. (p. 44)

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 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 has reports of pain in multiple areas of his body; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. This Administrative Law Judge finds that claimant's impairments do not meet duration. Even though he did have acute kidney stones; they

were resolved during his hospital stay. Assistive devices are not medically needed or required for ambulation. The clinical impression is 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. Although claimant does have neuropathy in his feet, his condition is non-severe. 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 or mental impairment which has lasted or will last the durational requirement of 12 months or more. 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 work as a counter parts person or as a parts driver 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 which he has engaged in, in the past.

Claimant did testify that he can walk 100 feet, stand for five minutes, and sit for 30 minutes at a time. Claimant testified he could shower and dress himself, but cannot squat because he has arthritis in his knees but he is able to bend at the waist and tie his shoes, but not touch his toes. Claimant testified that the heaviest weight he can carry is 20 pounds and he can carry 15 pounds repetitively. Claimant is right-handed and stated that he does have neuropathy and severe pain in his hands. Claimant's level of pain on a scale from 1 to 10 without medication is a 10 and with medication is a 5/6. Claimant testified that in a typical day he gets up and takes his medication, showers and cleans himself up, has breakfast, uses the computer, watches television, and falls asleep. Then he has lunch, sits on the porch, watches more television, and uses the computer again. Claimant drives his wife to the grocery store and then has dinner and watches television until 10:00 p.m. when he goes to bed.

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. 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. Therefore, this Administrative Law Judge finds that the objective medical evidence on the

record does not establish that claimant has no residual functional capacity. Claimant is disqualified from receiving disability at Step 5 based upon the fact that he has not established by objective medical evidence that he cannot perform light or sedentary work even with his impairments. Under the Medical-Vocational guidelines, a younger individual (age 48), 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: October 19, 2009

Date Mailed: October 19, 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:

