

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: 2009-30031

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

September 1, 2009

Genesee 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 1, 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 May 27, 2008, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.

(2) On March 27, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical-Vocational Rule 202.18.

(3) On April 1, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On June 8, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On August 4, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommended decision: We do not have an update on his condition since an acute exacerbation of congestive heart failure in [REDACTED]. The evidence in the file is inadequate to access all the claimant's alleged impairments. The department is to obtain a copy of the physical consultative examination done on [REDACTED]. MA-P is denied per 20 CFR 416.913(d), insufficient evidence. Retroactive MA-P was considered in this case and is also denied.

(6) The hearing was held on September 1, 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 September 3, 2009.

(8) On September 9, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The claimant has a history of cocaine dependence. He had a defibrillator placement in [REDACTED] and exacerbation of congestive heart failure (CHF) in [REDACTED]. In [REDACTED] his congestive heart failure was compensated. Lungs were clear and he had no edema. In [REDACTED] he had effusion and crepitus in his knees but was able to walk without assistance. Neurological findings and mental status were

unremarkable. The claimant's physician opined that the claimant was disabled. However, this medical source opinion (MSO) is inconsistent with the great weight of the objective medical evidence and per 20 CFR 416.927c(2)(3)(4) and 20 CFR 416.927d(3)(4)(5), will not be given controlling weight. The objective 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 unskilled, light work. In lieu of detailed work history, the claimant will be returned to other work. Therefore, based on the claimant's vocational profile of a younger individual, limited education and a history of unskilled work, MA-P is denied using Vocational Rule 202.17 as a guide. Retroactive MA-P was considered in this case and is also denied.

(9) Claimant is a 45-year-old man whose birth date is [REDACTED]. Claimant is 5' 9-1/2" tall and weighs 235 pounds. Claimant attended the 8<sup>th</sup> grade and has no GED. The claimant is able to read and write and does have basic math skills.

(10) Claimant last worked in 2001 manufacturing windows. Claimant has also worked cleaning up buildings, doing yard work, drywall, plumbing, and roofing.

(11) Claimant alleges as disabling impairments: hypertension, congestive heart failure, arthritis, a hairline fracture to the head, arthritis in his elbows, shortness of breath, dizziness, and memory problems.

#### 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 2001. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that in [REDACTED] the claimant had a defibrillator placement inserted. He was hospitalized in [REDACTED] due to congestive heart failure exacerbation. (pp. 8-10) The physical examination reported his blood pressure was 137/64. He ambulated with an antalgic gait with a mild wide base. He had mild wheezing in both lung fields. (Document #2, pp. 1-2)

A letter dated [REDACTED] showed the claimant had congestive heart failure—severe systolic dysfunction, non-ischemic dilated cardiomyopathy, advanced degenerative arthritis of the knees, and rheumatoid arthritis—treatment resistant. The doctor considered the claimant to be disabled. (New Information, p. 1) In [REDACTED] the claimant ambulated with a mild antalgic gait using a cane but he could walk without the cane. He had crepitus and effusion in the knees. He had full range of motion of the cervical lumbar spine. Muscle strength was normal in all extremities. Sensory function and reflexes were normal. (New Information from DDS) Progress notes dated [REDACTED] showed the claimant's chest was clear to auscultation. He had no edema. His congestive heart failure was compensated. His chest pain was right-sided and most likely musculoskeletal. (New Information from DDS) A mental status exam dated [REDACTED] was unremarkable. His diagnosis was a history of cocaine dependence. (New Information from DDS)

A psychiatric psychological medical report dated [REDACTED] indicated that claimant was 5' 9" tall and weighed 235 pounds. He was casually and neatly dressed. His hygiene and grooming appeared to appropriate. He reported needing reminding from others to keep scheduled appointments. He reported some problems with directions but was able to find familiar locations independently. He seemed to be in contact with reality throughout the examination. His gait, posture, and motor activity appeared to be affected by his pain. He used a cane and walked slowly with a limp. He described problems walking because of back and knee pain. He reported being unable to walk long distances. He did not seem to exaggerate or minimize symptoms. He was cooperative during the examination. His speech was unimpaired. His stream of mental activity was spontaneous and organized. There was no significant evidence of hallucinations, delusions, persecutions, obsessions, thoughts controlled by others, or unusual powers. He denied any recent suicidal or homicidal ideation. He has never attempted suicide. He reported problems sleeping because of the pain. His affect was appropriate to his mood. His emotional state appeared to be normal during the exam. He smiled and laughed at times during the exam. He used humor appropriately. He was oriented to time, person, and place. He stated that it was [REDACTED] and he was in [REDACTED]. He could recall five numbers forward and three numbers backward. He could recall three objects three minutes later. Past presidents were Bush, Clinton, and another Bush. His birth date was correctly identified as [REDACTED]. The current president was Obama. Three large cities were Flint, Chicago, and New York. Two current famous people were Michael Jackson and Lionel Ritchie. Current events were Obama trying to pass the medical law. His calculations were  $3+4=7$ ,  $8-5=3$ ,  $3 \times 4=12$ ,  $12/2=6$ . Subtracting 7's from 100 were 93 (with difficulty), 87, 80, and 77. Subtracting 3's from 30 were 27, 24, 21, 19, and 16. Abstract thinking for the grass always looks greener on the other side of the fence he stated

things always seem better than what you got. For don't count your chickens before they hatch he stated don't count your money before you get it into your hands. For similarities and differences when asked what way are a bush and a tree alike he said both of them are green and how are they different he said trees grow taller than bushes. In his judgment when asked what he would do if her say a fire in a theater he stated he's try to tell somebody. If he found an envelope he'd put it in the mailbox. His future plans were just to try to make it a few more years. His diagnosis was history of cocaine dependence. (pp. 1-4)

An [REDACTED] [REDACTED] evaluation indicates that claimant was an overweight adult male. Height was 5' 10" tall, weight 240 pounds. His standing posture was upright. The shoulders and pelvis remained symmetrical bilaterally. He was ambulating with a mild antalgic gait and using a standard cane, but he could walk without the cane with a stable gait. He was wearing open end shoes during the ambulation. He refused to ambulate on tiptoe or the heel. He was able to squat fully with deep knee and hip bending and he could sit up independently. The range of motion remained within the normal limits. There was no evidence of cervical paravertebral muscle spasm or soft tissue tenderness. There was no atrophy over the shoulder girdle. Active abduction was 170 degrees bilaterally. Internal and external rotation remained normal. No tenderness noted in the greater tuberosity. Examination of the elbows and wrists revealed no abnormal clinical finding and the range of motion remained within the normal limit. No crepitus, swelling, or heat. In the examination of the hands he could make full fists in both hands with complete closure. No evidence of atrophy of the intrinsic muscles of the hands on either side. Grip strength as tested on the dynamometer showed the right hand of 80 pounds, left hand of 78 pounds. He is right-handed. Examination of the lumbar spine he maintained normal lumbar lordosis. Flexion was 90 degrees, extension 20-30 degrees, side bending was 20

degrees, and dorsal lumbar rotation was 30 degrees. There was no evidence of lumbar paravertebral muscle spasm or soft tissue tenderness. The lumbar spine was extremely flexible. Straight leg raise was 60 degrees on the right and 70 degrees on the left without radicular pain. Patrick test remained negative bilaterally. Examination of the hips revealed flexion 95 degrees bilaterally, extension 30 degrees bilaterally, abduction, adduction, and the rotation remained within the normal limit. Examination of the knees showed flexion of the right knee 130 degrees, left knee 140 degrees, extension 0 degrees. There was evidence of effusion about 1+ in both knees. 2+ crepitus noted bilaterally. Patellar motion was full. Examination of the ankles remained within normal limit bilaterally. His leg length measured equal bilaterally. Measurement of the quadriceps was 17 inches bilaterally, calf measured as 14 inches bilaterally. Heel to the shin test was intact on both sides. Sensory examination with touch and pinwheel remained intact in all dermatomes in both upper and the lower extremities. Deep tendon reflexes revealed upper extremities 2+ bilaterally, knee and ankle reflexes 2+ bilaterally. Manual muscle strength examination revealed normal grade in the upper extremities as well as normal grade in the lower extremities. His pinch grip was intact. He could open a jar using the right and the left hand. He showed no difficulty getting on and off the examination table. He could sit to stand and supine to sit and remained independent. The discussion indicated that he should be able to be gainfully employed without any restrictions as far as his musculoskeletal system is concerned. (pp. 1-4)

An [REDACTED] letter from [REDACTED] indicates that claimant has congestive heart failure with severe systolic dysfunction, non-ischemic dilated cardiomyopathy, advanced degenerative arthritis of the knees, and rheumatoid arthritis, and has severe limitations in walking, standing, and sitting for prolonged periods of time. (New Information, p. 1)

An [REDACTED] Social Security Administration, Supplemental Security Income notice indicates that claimant was denied for Social Security. The Social Security Administration stated: “We have determined that your condition is not severe enough to keep you from working. We considered the medical and other information, your age, education, training, and work experience in determining how your condition affects your ability to work.”

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 are insufficient objective medical findings that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, the most recent medical assessment indicates that claimant has basically normal findings in both his mental status and in his physical status. His congestive heart failure is compensated. His chest was to clear to auscultation. He had no edema. He was able to ambulate with a mild antalgic gait using a cane but he could walk within the cane. He had full range of motion of the cervical and lumbar spine. His muscle strength was normal. 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.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers mental limitations resulting from his reportedly depressed state.

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 contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. 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.

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 as he had not established that he suffers a severely restrictive physical or mental impairment for the durational requirement of 12 months or more.

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. Claimant's past relevant work was doing yard work or manufacturing windows. Unfortunately, the objective medical information in the file does not indicate that claimant cannot perform his past work. Therefore, if claimant had not already been denied at Step 2, he would again be denied at Step 4.

Even if claimant cannot perform his past work, 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 testified on the record that he sweeps the floor sometimes and that he can walk from the house to the mailbox, stand for 10 minutes at a time, and sit for 10 minutes at a time. Claimant testified that he can only sometimes shower and dress himself. Claimant testified that he can carry less than a gallon of milk. Claimant testified that he has stiffness in his joints and fingers and his elbows swell. His level of pain on a scale from 1 to 10 without medication is a 10 and with medication is a 7.

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. In addition, claimant did state that he does receive relief from his pain medication. 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 45), with a less than high school education and an unskilled work history who is limited to light work is not considered disabled pursuant to Medical-Vocational Rule 202.17. It should also be noted that claimant is not disabled based upon the determination of the Social Security Administration.

#### 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 29, 2009

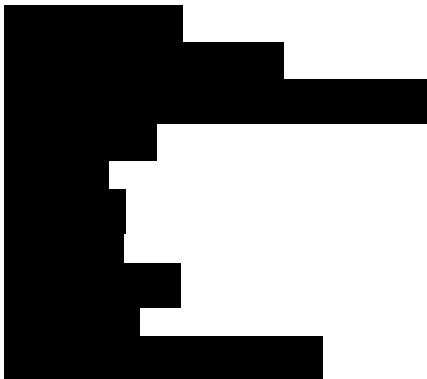
Date Mailed: October 29, 2009

**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:

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