

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: 2009-33449

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

September 30, 2009

Ingham County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, an in-person hearing was held on September 30, 2009. 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 December 19, 2008, 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 prior work.

(3) On April 21, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On June 16, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On September 1, 2009, the State Hearing Review Team again denied claimant's application stating that it needed additional medical information to make a determination.

(6) The hearing was held on September 30, 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 December 1, 2009 and December 3, 2009.

(8) On December 9, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of light work per 20 CFR 416.967(b) pursuant to Medical Vocational Rule 202.21.

(9) Claimant is a 49-year-old man whose birth date is [REDACTED]. Claimant is 6' tall and weighs 180 pounds. Claimant attended the 11th grade and has no GED and was in special education for speech when he was school. Claimant is able to read and write and does have basic math skills.

(10) Claimant last worked January 2004 as a landscaping person and plowing snow for seasonal work. Claimant has also worked drywall construction for 22 years and drove a truck for a meat company for 1 year.

(11) Claimant alleges as disabling impairments: liver disease, bipolar disorder, pancreatitis, asthma, right ankle fracture, nerve damage, hepatitis C, and cardio obstructive pulmonary disease, shortness of breath, acid reflux disease, and short term 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 January, 2004. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a medical examination [REDACTED] indicates that the clinical impression is that claimant is deteriorating but did not provide an assessment. Claimant's general examination was normal, his respiratory system was normal, his cardiovascular area was normal but he was not assessed for other areas of examination. Claimant was 5'10" tall and weight 184 pounds and his blood pressure was 131/88. (pp. 1-2 of the claimant's exhibits) An [REDACTED] medical examination report indicates that claimant had a ruptured disc at L4-5 eccentric to the left resulting in left lateral recess stenosis and presumed impingement upon the traversing of L5 nerve root.

An evaluation conducted by [REDACTED] indicates that claimant was a well-developed, well-nourished gentleman. He walked very slowly. His vital signs were pulse oximetry on room air was 96%. Height is 71 inches. His weight was 189. Pulse was 120 and regular. Blood pressure 117/80, respiratory rate 20 and unlabored. HEENT: Pupils were equal, round and reactive to light and accommodation. Extraocular movements were intact. TMs pearly gray. Nares and pharynx were unremarkable. Discs not evaluated. The neck was supple without adenopathy, thyromegaly, bruits, or JVD. The skin was unremarkable. The chest sounds were somewhat diminished. He had no use of accessory muscles of respiration. No rales, wheeze, or rhonchi. The heart had regular rate and rhythm. The abdomen was protuberant with mild right upper quadrant tenderness without a fluid wave. He had no gross masses or organomegaly. He does have an umbilical hernia which is moderately sized and immediately reducible. In the back, there is no CVA tenderness. In the extremities, distal extremities with good pulses. No pedal edema. In the musculoskeletal area the patient had diminished range of motion of the neck, back and shoulders. He had decreased forward and backward extension of the back. He has left paralumbar tenderness, and he has straight leg raising, left greater than the right. His DTRs are +2 and symmetrical. The patient does definitely have difficulty getting on and off the exam table, climbing up one step onto the exam table. He walks quite slowly. The neurological exam was without any gross deficit. The assessment was acute myofascial back pain with lumbar degenerative disc disease, chronic obstructive pulmonary disease and a history of asthma. He had some mild restriction but he was not taking his medication as ordered. He did have improvement with administration of a bronchodilator. (Claimant Exhibits C3-C4)

There is an MRI taken on [REDACTED] of the lumbosacral spine and revealed a ruptured disc at L4-5 eccentric to the left resulting in the left lateral recess stenosis and presumed impingement upon the traversing left L5 nerve root. Claimant had low back pain and displacement of the lumbar intervertebral disc. The objective findings are most consistent with a left paracentral L4-L5 herniated disk. (Claimant Exhibit D3).

A MRI report of [REDACTED] indicates a focal left paracentral disc herniation at the L4-L5 level likely compressing the traversing left L-5 nerve root and degenerative change of the L-5-S1 level with loss of disc height and Type-II modic changes with bilateral facet disease, but without evidence of focal paracentral disc herniation, severe spinal stenosis, or nerve root compression. (Claimant Exhibit E2)

On [REDACTED], claimant received a successful completion of L4-5 and L5-S1 transforaminal epidural steroid injection without complications. (Claimant Exhibit F3) On [REDACTED] report indicates that claimant was 6' tall, weighed 185 pounds, had a pulse of 86, respiration 16, blood pressure 128/86 and oxygen saturation at 96%. (Claimant Exhibit F4)

On [REDACTED], claimant had an EGD with biopsy and total colonoscopy. The final diagnosis was irregularity of the Z-line. Mild nonspecific esophagitis, gastritis and duodenitis. (Claimant Exhibit G12) Claimant received a negative colonoscopy to the cecum. (Claimant Exhibit G13)

On [REDACTED], claimant was treated at [REDACTED] for acute pancreatitis and alcohol abuse. The medical report indicates claimant is a chronic alcoholic and has a history of alcohol withdrawal in the past and he was placed on alcohol withdrawal protocol. He was assessed with alcoholic liver disease and has transaminitis with high AST and

ALT. He does not have any signs of chronic liver cell failure. He was also diagnosed with a bipolar disorder, and he had been off of his medication but his current affect was baseline. He had a deep venous thrombosis and gastrointestinal prophylaxis. (pp. 5-9)

Claimant testified on the record that he used to smoke a pack of cigarettes per day and he stopped smoking 2 ½ years before the hearing. That he stopped drinking November 4, 2008 but he used to drink a 12-pack of beer per day. Claimant testified he stopped smoking marijuana in 1975. Claimant testified he can walk 30 to 40 feet but cannot walk without the walker. Claimant testified he can stand for 15 minutes, sit for 15 minutes but cannot shower and dress himself, squat, bend at the waist or tie his shoes. Claimant testified the heaviest he can carry is 1 pound and he can't carry a gallon of milk and he is right-handed and his left wrist is sore. Claimant testified that his level of pain on a scale from 1 to 10 without medication is a 10 and with medication it is a 4.

Claimant testified he takes a bus to the grocery store and to medical appointments and the bus ride is 45 minutes long and he cooks two times per week and cooks things like hamburgers and he grocery shops 2 times per month and usually needs help with everything. Claimant testified that he can change bed in his room. On page 76 of the clinical notes indicates claimant's vital signs were blood pressure 109/64, pulse 93. Claimant was in no acute distress. His mental status had pressured speech but no frank psychosis. (p. 76)

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. It should be noted for the record that claimant broke his ankle in 2003 and did have a walker for that purpose but was removed from the walker [REDACTED] and told that he could use it when walking outside or walking on rough terrain if he felt it gave him extra support but

that he no longer needed the walker and that he should start a physical therapy regiment to help with ligament repair. (p. 73) 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 no corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. The Administrative Law Judge finds that the clinical impression that claimant is deteriorating; however, there has been no finding of what it is that is considered to be deteriorating. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. Claimant does have some back problems however, 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 impairment. In addition, claimant's reports of pain while profound and credible, are out of proportion to the objective medical evidence contained in file as it relates to claimant's ability to perform work. Lastly, claimant did testify on the record that he receives substantial relief from his pain medication.

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 in the record indicating claimant suffers mental limitations resulting from his reportedly depressed or bipolar state. 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. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. For these reasons, this Administrative Law Judge finds that claimant has failed to meet his burden of proof at Step 2. Claimant must be denied benefits at this step based upon his failure to meet the evidentiary burden.

If claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of claimant's condition does not give rise to a finding that he would meet a statutory listing in the code of federal regulations.

If claimant had not already been denied at Step 2, this Administrative Law Judge would have to deny him again at Step 4. This Administrative Law Judge finds that claimant could probably work driving a truck even with his physical 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. 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 testified on the record that he does have need of a walker and that it is prescribed by his doctor. However, there is no updated medical information in the file which indicates that claimant is in need of a walker to ambulate. Claimant does retain bilateral manual

hand dexterity. 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.

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 by the necessary, competent, material, and substantial evidence 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: March 11, 2010

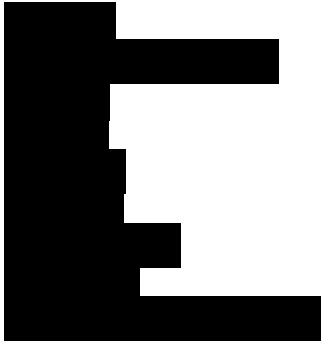
Date Mailed: March 12, 2010

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.

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