

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: 2010-1763

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

January 5, 2010

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 January 5, 2010. 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 State Disability Assistance (SDA)?

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 June 29, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On August 5, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

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

(4) On August 20, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On October 19, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: claimant's statements are not credible. Comments at doctor appointments do not match with what the claimant has provided to the state. In the statements provided to the state, the claimant makes it sound as if they are fairly dependent on others for all daily activities. Per states made to health professionals, the claimant is more independent and active. The Medical Review Team's determination of the claimant retaining the ability to perform sedentary tasks is affirmed. This denial applies to Medicaid-P, retroactive Medicaid-P and state disability. Listing 1.04 was considered in this decision.

(6) The hearing was held on January 5, 2010. 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 January 6, 2010.

(8) On January 11, 2010, the State Hearing Review Team again denied claimant's application stating that claimant's impairments lack duration Per 20 CFR 416.909.

(9) Claimant is a 32-year-old man whose birth date is [REDACTED] Claimant is 6'1" tall and weighs 262 pounds. Claimant is a high school graduate. Claimant is able to read and write and does have basic math skills.

(10) Claimant last worked June 2009 as a [REDACTED] He has also worked in construction.

(11) Claimant alleges as disabling impairments: two back surgeries in October 19 & December 2, 2009, nerve damage and debris in the nerve canal, S1 fracture, and arthritis.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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 June 2009 as a [REDACTED]. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a patient instruction sheet from claimant's doctor indicates that claimant is unable to return to work until June 1, 2010. New medical information in the file indicates that claimant was admitted for surgery in October 19, 2009, for right side L5-S1 radiculopathy and discogenic back pain and he received a right side lumbar sacral discectomy infusion. (claimant exhibit A1) When claimant was discharged from the hospital, he was in no acute distress. He was awake, alert and oriented x3. His

temperature was 36.9 degrees, pulse was 100, and respiratory rate was 18, blood pressure was 149/100, oxygen saturation point was 96% on room air. His HEENT: head is normocephalic and atraumatic. His pupils were equal, round and reactive to light in accommodation. Extraocular muscles were intact. No jugular venous distention. The chest was clear to auscultation except for a few scattered rhonchi. He had no crackles; however, there was normal chest expansion and normal air entry. In the heart, S1+S2, regular rate and rhythm. No murmurs, heaves, or thrills. The point of maximum impulse was non-displaced. The abdomen was soft, positive bowel sounds. No tenderness, no hepatosplenomegaly. No hernias. In the extremities there was no edema and the peripheral pulses were equal. His skin was grossly intact with normal nail hair distribution. The impression was status post lumbar discectomy infusion, hemodynamically stable. Pain was fairly well controlled on a PCA pump. Claimant had dyslipidemia and he would be resumed in a whole dosage of gemfibrozil. He was also diagnosed with gastroesophageal reflux disease and he was placed on Nexium. He has suspected of obstructive sleep apnea and the doctor decided that he would benefit from an outpatient sleep study. Claimant had a nicotine addiction and they put him on a nicotine patch and they put the claimant on bilateral sequential compression devices, for deep venous thrombosis prophylaxis and they will start heparin when it was ok with surgery. (p A5) Claimant has 5/5 strength in all bilateral extremities on October 19, 2009. (p A8) On November 25, 2009, claimant's temperature was 36.7, his blood pressure was 139/91, pulse was 111, respiration 16. O2 saturation was 97% on room air. He was laying in a bed in [REDACTED] and in no acute distress. HEENT, no jugular venous distention. NO scleral icterus. No sternal retractions, no thyromegaly. The respiratory system and breathing was unlabored with good air entry bilaterally. No crackles, wheezes or rhonchi. In the cardiovascular there was regular rate and

rhythm, normal S1, S2. No clicks, murmurs, gallops, rubs, thrills or heaves. The abdomen was soft, non-tender, and non-distended. Positive bowel sounds in all 4 quadrants. The musculoskeletal examination showed no edema in bilateral lower limbs. No muscular atrophy. No joint swelling. There was tenderness to palpation around the L5-S1 region. In the neurologic area, he was awake, alert, oriented x3. Muscle strength of 5/5 in both upper extremities, and 4/5 bilateral lower extremities. Sensation intact to the fingertips and toes. He had adequate insight and judgment. A CT scan of the lumbar spine showed post surgical fusion of L5-S1. There was a fracture of the superior articular process of S1 on the right with fractured fragment causing mild lateral canal stenosis. Mild retropulsion of a caged device on the right, extending beyond the posterior margin of L5 causing severe narrowing of right lateral recessive possible impingement of right S1 nerve root. He was assessed with having intractable back pain secondary to S1 fracture. Chronic opiate dependents, dyslipidemia, gastroesophageal reflux disease, and osteoarthritis. (p 8) He was given pain medication and sent home and instructed to follow-up with neurosurgery for surgical repair of S1 fracture.

On December 2, 2009, claimant's blood pressure was 149/90, his temperature was 97.6, his pulse was 103, oxygen saturation point was 96% on 2 liters. He was lying in bed and was not in acute distress, with no respiratory distress. His HEENT, were atraumatic and normocephalic. Pupils were equal, round and reactive to light accommodation. His lungs were clear to auscultation bilaterally. His heart had tachycardia, with regular S1 and S2 within normal limits. His abdomen was soft, non-tender and non distended, bowel sounds were positive. The extremities were 5/5 in all four extremities. The neurological area, he was awake, alert and oriented x3 and his cranial nerves were grossly intact. His pain was controlled and he was on PCA pump. (p A20) A medial examination report of December 1, 2009, indicates that claimant

was normal in all areas of examination, that he was 73" tall and weighed 262 pounds. His blood pressure was 155/91 and he is right hand dominant. He had temporary disability and he was expected to return to work April 22, 2010. It was determined that he could do no lifting and he should not to any standing, walking or sitting until April 22, 2010 and that he had no mental limitations. (pp 27-28)

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. Claimant testified on the record that he does not have any mental impairment.

Claimant has reports of severe pain in his back. There are corresponding clinical findings that support the reports of symptoms of pain made by the claimant. Claimant testified that he can stand for 5 minutes with a cane, sit for 20 minutes, and can walk to the car about 30 feet, but he cannot stand by himself at all and has to use his cane since his surgery. Claimant cannot squat, bend at the waist, shower and dress himself, tie his shoes or touch his toes. Claimant testified that his level of pain on a scale from 1-10 without medication is a 10 and with medication is an 8. This Administrative Law Judge finds that claimant's impairments do not meet the duration. Claimant did have a herniated disc and received surgery in October 2009. Then he fell and reinjured himself and also received surgery in December 2009. His medical doctor indicates in the file that he should be able to return to work in April 2010. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, claimant has restricted himself from tasks associated with occupational functioning based upon his reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that claimant has met the evidentiary burden of proof can be made. This Administrative Law Judge finds that the

medical record is insufficient to establish that claimant has a severely restrictive physical impairment which has lasted or will last the durational requirements of 12 months or more.

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. Claimant does not meet a listing of 1.04A or listing 1.04.

At the current time claimant is recovering from surgery which he had December 2, 2009. Claimant's medical doctor states that claimant should be able to return to work April 2010. There is no indication as to how claimant can walk or stand or sit. However, the objective medical evidence in the record indicates that claimant has extremity strength in all extremities 5/5. This Administrative Law Judge will not disqualify claimant at step 4 based upon the fact that his prior work is construction and as a bouncer which means that he would have to be in good physical condition.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the

national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

Claimant has submitted insufficient objective medical evidence that he lacks the residual functional capacity to perform some other less strenuous tasks than in his prior employment or that he is physically unable to do light or sedentary tasks if demanded of him. Claimant retains bilateral manual hand dexterity and his objective findings do not indicate that claimant could not perform 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 at least sedentary work until April 2010 and then he should be able to return to his prior 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 sedentary work even with his impairments. Under the Medical-Vocational guidelines, a younger individual (age 32), with a high school education and an unskilled work history who is limited to light work is not considered disabled.

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. PEM, Item 261, p. 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

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, retroactive Medical Assistance and State Disability Assistance benefits. The claimant

should be able to perform a wide range of sedentary work even with his impairments. The claimant does retain bilateral manual hand dexterity. 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: April 30, 2010

Date Mailed: May 03, 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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