

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 201026791
Issue No: 2009; 4031
Case No: [REDACTED]
Hearing Date:
May 12, 2010
Ingham County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain for Ivona Rairigh

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 May 12, 2010. Claimant personally appeared and testified. Claimant was represented at the hearing [REDACTED]

This hearing was originally held by Administrative Law Judge Ivona Rairigh. Ivona Rairigh is no longer affiliated with the Michigan Administrative Hearing System Administrative Hearings for the Department of Human Services. This hearing decision was completed by Administrative Law Judge Landis Y. Lain by considering the entire record.

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 January 12, 2010, claimant filed an application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On February 25, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical Vocational Rule 202.20.

- (3) On March 1, 2010, the department case worker sent claimant notice that his application was denied.
- (4) On March 9, 2010, claimant's representative filed a request for a hearing to contest the department's negative action.
- (5) On March 31, 2010, 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) and unskilled work per 20 CFR 416.968(a) pursuant to Medical Vocational Rule 202.20.
- (6) The hearing was held on May 12, 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 August 13, 2010.
- (8) On August 17, 2010, the State Hearing Review Team again denied claimant's application stating in its' analysis and recommendation: there is additional evidence provided by the Office of Administrative Hearings. The new evidence does not materially alter the previous determinations made by MRT February 25, 2010, or SHRT April 1, 2010. It remains reasonable that the claimant would retain the ability to perform light exertional simple and repetitive work. The claimant's impairment's 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 light exertional work of a simple and repetitive nature. Therefore, based on the claimant's vocational profile of 48 years old, a high school equivalent education and a history of no gainful employment, MA-P is denied using Vocational Rule 202.20 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the nature and severity of the claimant's impairment's would not preclude work activity at the above stated level for 90 days. Listings 1.02, 1.03, 1.04, 4.04, 9.08, and 12.04 were considered in this determination.
- (9) On the date of hearing claimant was a 48-year-old man whose birth date is [REDACTED]. Claimant is 6' tall and weighs 200 pounds. Claimant completed the 6th grade in [REDACTED] and has testified that he was not able to read and write and he could only do easy basic math skills.
- (10) Claimant testified on the record that he came from [REDACTED] and that he worked cleaning offices and in [REDACTED] went to [REDACTED] and did not work at all until he got out on [REDACTED]. In [REDACTED] he was a life guard, he did fishing and labor jobs, and agriculture.

- (11) Claimant alleges as disabling impairments: heart attack, surgery, coronary artery disease, back and hand pain, hypertension, diabetes and depression.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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 approximately 1999. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that the claimant was admitted for a cardiac catheterization, p. 1, where a 20-30% stenosis of the right coronary artery was noted. Revascularization efforts were done. The claimant has a history of presenting to emergency services with vague complaints of chest pain with normal results. The claimant was seen by the Social Security Administration (SSA) for a physical examination and a psychiatric examination (pp. 12, 7). The claimant's presentation of the psychiatric evaluation was not repeated at the physical examination 3 days later. It was noted that during the physical examination the claimant did present with less than full effort on all costs.

A [REDACTED] discharge summary indicates that claimant came in to the hospital with chest pain, arm pain, occasional diaphoresis, and was treated with nitroglycerin. EKG showed some non-specific changes. CPK and CK-MB were negative. Troponin was 0.45 and 0.15 and he underwent cardiac catheterization that showed a normal left main. LAD had catheter induced spasm. Circumflex was normal. He had a spasm of the right coronary artery resolved with intracoronary nitroglycerin, proximal disease 20-30%. His pain and mild elevation of troponin in this were thought to be secondary to coronary spasm. His ejection fraction was normal. There were no wall motion abnormalities. It was recommended that he stop smoking (Exhibit A, p. 1).

A physical examination dated [REDACTED] indicates that vital signs were blood pressure 142/92, respiratory rate 18, oxygen saturation 95% on room air. HEENT: normocephalic and atraumatic. Normal mucus membranes. There is no facial tenderness. The neck: the trachea was midline. There was no thyromegaly or lymphadenopathy. The chest was symmetrical, the chest was clear, the claimant was in no acute distress. The heart had no murmurs, rubs or gallops. No peripheral edema.

The abdomen was soft, non-tender and bowel sounds were positive. No hepatosplenomegaly. In the extremities, there was no tenderness or ischemic changes. No irregularities. In the neurologic area, there were no focal deficits. EKG showed normal sinus rhythm, cardiac murmur negative times 2. Electrolytes were unremarkable as well as normal CBC. The chest x-ray done in the emergency department was negative. The impression was A-typical chest pain, a hypertension, and diabetes mellitus type II (client exhibit A, p. 4).

A [REDACTED] medical examination report indicates that claimant's temperature was 97.8, heart rate 88, blood pressure 140/80, respiratory rate 14, saturation on room air 98%. He was alert and oriented x3 and in no acute distress (p. A11).

Claimant was diagnosed with hypertension, hyperlipidemia, diabetes mellitus type II, hypokalemia, and gastroesophageal reflux disease (p. A12).

A psychiatric/psychological medical report dated [REDACTED] indicates that claimant was illogical and organized in response to questions. His level of motor activity was very slow. He was lethargic. He was very dependent on others for some of his basic needs. The doctor could not tell if he was exaggerating or minimizing his symptoms. He appeared to have questionable contact with reality. He denied having hallucinations or delusions. He denied being persecuted. He denied others controlling his thoughts or that he had any unusual powers. He did report feeling worthless, helpless, and guilty. He reported somatic difficulties including pain, problems with sleep, difficulties with appetite, fatigue and weakness. He appeared very depressed but not anxious or angry. He was oriented to person and place. He knew it was a Monday in [REDACTED] he did not know the day of the month. In immediate memory he remembered 3 digits forward and 3 digits backward. In recent memory he remembered 0 of 3 objects after a 3 minute delay. When asked to name the recent presidents of the United States in correct order, he gave, the black one Obama, and Clinton. When asked to name the past two governors of Michigan he stated that he didn't know. HE did not know his birthday. When asked to name 3 large cities in the United States, he stated Michigan, Las Vegas, and Miami. The only large city he could name in Cuba was Havana. When asked to name 5 well-known living Americans, he stated, Christina Aguilera. He could not do serial 7's or serial 3's but he stated $3+4=7$, $9+6=15$, $4*5=20$ he did not know and $9/3=3$. He stated that an orange and a banana are not alike and they are different in color and shape. Claimant was diagnosed with major depression, recurrent. A current GAF of 48. His prognosis was poor and he would not be able to manage his own benefit funds (pp. 9-11).

At Step 2, claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. There is insufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant has 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. There are no laboratory or x-ray findings listed in the file which

support claimant's contention of disability. 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. 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.

Claimant alleges the following disabling mental impairments: depression and anxiety.

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 severe mental limitations. There is no mental residual functional capacity assessment in the record. There is insufficient 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 oriented to time, person and place during the hearing. Claimant was able to answer all of the questions at the hearing and was responsive to the questions. 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 based upon his ability to perform his past relevant work. There is no evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work in which he has engaged in, in the past. Therefore, if claimant had not already been denied at Step 2, he would be denied a gain 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 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.

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. 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

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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