

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2010-32733

Issue No: 2009

[REDACTED]

Kent County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain for Jana Bachman

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, a telephone hearing was held on [REDACTED]. Claimant personally appeared and testified.

This hearing was originally held by Administrative Law Judge [REDACTED]. Judge [REDACTED] is no longer affiliated with the Michigan Administrative Hearing System Administrative Hearings for the Department of Human Services and this hearing decision was completed by Administrative Law Judge [REDACTED] by considering the entire record.

ISSUE

Whether the claimant meets the disability criteria 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 February 27, 2007, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.
- (2) On April 13, 2007, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical Vocational Rule 202.14.
- (3) On April 19, 2007, the department caseworker sent claimant notice that his application was denied.

- (4) On May 17, 2007, claimant filed a request for a hearing to contest the department's negative action.
- (5) On September 19, 2007, the State Hearing Review Team again denied claimant's application stating that it had insufficient evidence and requested an independent consultative evaluation by an internist.
- (6) The hearing was held on June 15, 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 September 29, 2010.
- (8) On October 6, 2010, the State Hearing Review Team approved claimant for Medical Assistance benefits from July 2009 forward and denied claimant Medical Assistance benefits prior to July 2009 stating in its' analysis and recommendation: The claimant was approved for SSI disability benefits in February 2010 with an onset of July 2009. Therefore, MA-P benefits would be allowed as of July 2009 based on that SSI allowance. However, the application date in this case was in February 2007 with a request for retro MA-P until November 2006. This case was looked at for the period of time from November 2006 through July 2009 SSI onset. The claimant was admitted in October 2006 to November 2006 with multiple organ failure due to methadone use. His condition did improve during his hospitalization. He had an acute myocardial infarction at that time and had a pacemaker placed in November 2006. In November 2007 the claimant had severe hearing loss but it did not meet the listing level of 90Hz or greater. The claimant would be given light limitations avoiding jobs that required good hearing. The claimant would be able to return to his past job as a conductor/railroad switch man prior to his SSI approval. The claimant was approved for SSI disability benefits in February 2010 with a current onset of July 2009. Therefore, MA-P benefits are automatically approved as of July 2009 to current. Prior to the DDS approval of July 2009 the claimant would have retained the physical residual functional capacity to perform light work. The claimant's past work as a conductor/railroad switch man was typically performed at the light exertional level. Therefore, the claimant retains the capacity to perform his past relevant work prior to July 2009. MA-P and retro MA-P were denied per 20 CFR 416.920(e) prior to July 2009. No medical review is needed due to the SSI approval.
- (9) On the date of hearing claimant was a [REDACTED] whose birth date is [REDACTED]. Claimant is 5'11" tall and weighs 220 pounds. Claimant had an Associates Degree in Art. Claimant is able to read and write and does have basic math skills.

- (10) Claimant last worked doing patented campfire poker and was working 4-8 hours a day in 2007 making [REDACTED].
- (11) Claimant alleges as disabling impairments: low back pain, neck, shoulder and arm pain, heart problems, hearing loss and a right hand injury.

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 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).

Because of the Social Security Administration determination it is not necessary for the Administrative Law Judge to discuss the issue of disability from July 2009 to current. BEM, Item 260.

However, this Administrative Law Judge must discuss the issue of disability from the November 2006 retro MA-P application time period to July 2009.

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 2005. In 2005 claimant patented a camp fire poker and was working 4-8 hours per day and in [REDACTED] he made \$ [REDACTED] per year. Therefore, this Administrative Law Judge finds that claimant was not engaged in substantial gainful activity from 2006-2007 and is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that an audiology evaluation in November 2007 showed the claimant had severe sensorineural hearing loss at an average hearing threshold of 77 hertz. The claimant was admitted in October 2006 after he was found unresponsive secondary to methadone with sustained hypotension which led to multi-organ failure. His acute tubular necrosis improved with creatinine 1.5 at discharge. His hyperkalemia resolved. His liver improved. He also had an acute myocardial infarction during his admission (p. 111).

In November 2006 the claimant had no significant deficit noted on examination. He did have symptomatic bradycardia (pp. 48-49). He was noted to have normal coronaries by heart catheterization (p. 53). He also had chronic back pain (p. 54). The claimant did have pacemaker placed (pp. 55-57).

At Step 2, this Administrative Law Judge finds that claimant did have a severe impairment which has lasted or will last the durational requirement of 12 months or more or which could have resulted in death.

The analysis then proceeds 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.

In the instant case, this Administrative Law Judge finds that claimant could not perform his past relevant work in October 2006 when he was hospitalized nor in November 2007 when he had severe hearing loss and had a myocardial infarction and had to have a

pacemaker placed. This Administrative Law Judge finds that claimant was unable to perform work in which he had engaged in the past. Therefore, claimant was not denied disability at Step 4.

The Administrative Law Judge will continue to proceed through this sequential evaluation process to determine whether or not claimant had the residual functional capacity to perform some other less strenuous task 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).

This Administrative Law Judge finds that claimant has submitted sufficient medical objective evidence that he lacked the residual functional capacity to perform some other less strenuous tasks than in his prior employment and that he was physically unable to do light or sedentary tasks if demanded of him based upon his physical condition.

This Administrative Law Judge finds that the objective medical evidence on the record does establish that claimant had no residual functional capacity from November 2006 forward. Claimant is not disqualified from receiving disability at Step 5, based upon the fact that he has established by objective medical evidence that he cannot perform light or sedentary work even with his impairments from November 2006 through July 2009.

Claimant has established by the necessary competent, material and substantial evidence on the record that he was disabled for purposes of Medical Assistance and retroactive Medical Assistance benefits eligibility from November 2006 through July 2009.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant has established on the record that he was disabled for purposes of Medical Assistance and retroactive Medical Assistance benefits from the February 27, 2007 application and also for the retroactive months of November, December 2006 and January 2007.

Accordingly, the department's decision is REVERSED. The department is ORDERED to initiate a review of the February 27, 2007, application and retroactive Medical Assistance application if it has not already done so to determine if all other non-medical eligibility criteria are met. The department shall inform the claimant of the determination in writing. The department is also ORDERED to open an on-going Medical Assistance case for the claimant effective the month of SSI entitlement. No medical review is required because of SSI entitlement.

/s/ _____
Landis Y. Lain
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 5/24/11

Date Mailed: 5/24/11

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/alc

