

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 2010-35813
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 16, 2010
Newaygo 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, a telephone hearing was held on June 16, 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 August 28, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On April 16, 2010, the Medical Review Team denied claimant could perform other work.
- (3) On April 20, 2010, the department case worker sent claimant notice that his application was denied.
- (4) On May 10, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (5) On May 28, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The claimant does have disc protrusions at L4, L5 and S1. However, there is no evidence of significant neurological abnormalities. He did have a

slightly antalgic gait. The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical record indicates that the claimant retains the capacity to perform a wide range of light work. In lieu of detailed work history, the claimant will be returned to other work. Therefore, based on the 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. SDA is denied per PEM 261, Item 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days.

- (6) Claimant is a 47-year-old man whose birth date is [REDACTED]. Claimant is 5'6" tall and weighs 150 pounds. Claimant attended the 11 grade and has no GED. Claimant is able to read and write and does have basic math skills.
- (7) Claimant last worked in 2009 as a private contractor bidding jobs and laying tile, which he did for 18 years.
- (11) Claimant alleges as disabling impairments: degenerative disc disease, herniated lumbar disc, a need for surgery, lower back pain, left shoulder rotator cuff problems, and hypertension. Claimant stated that he has no mental impairments.

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 2009. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant testified on the record that he can stand for an hour, sit for an hour at a time but moving around. Claimant can walk 1-2 blocks and he can shower and dress himself, but needs help with his pants and sox. Claimant testified that he cannot squat and cannot have sex and he does bend at the waist somewhat, but he cannot tie his shoes or touch his toes. Claimant testified that his level of pain on a scale of 1-10 without medication is an 8 and with medication is a 4. Claimant is left handed and his hands and arms are fine and his left leg/foot hurts. Claimant testified that the heaviest weight that he can carry is 15 pounds, and repetitively he can take the garbage out which is 5-10 pounds. Claimant testified that he does smoke a pack of cigarettes a day and his doctor told him to quit and he is not in a smoking cessation program. Claimant testified that he quit drinking alcohol approximately 1 year before the hearing. Claimant testified that in a typical day he watches TV and moves around and then goes outside. Claimant testified that he has not been hospitalized within the last year but went to ER when he could not walk.

An October 12, 2009 examination report revealed that claimant was alert and oriented with normal facies and mood. He was 5'6" and weighed 163.8 pounds. He had a pulse

76 and respiratory rate of 16. Blood pressure was 158/86. He stated that he was having a good day and moved relatively well and could lie flat on the bed and get up well. His gait was normal, he stood normal, and he was not obese. He indicated that the pain was in the central low back and in the left L5-S1 radicular pattern. Exam today of his back revealed no asymmetry, deformity, swelling, waisting, or cutaneous lesions of note. He had no scoliosis, no kyphosis, and normal lordosis. There was no pelvic obliquity. He has a negative trendelenburg and he had noted to have bilateral paravertebral spasm. He has pain to palpation in his low back only. Range of motion and forward flexion is to the floor and it hurts him on the way down. He does not seem to have reversible spinal rhythm. Extension is intact as his rotation and lateral flexion in both range and without any pain. Straight leg raising in the lying position and in the sitting position is bilateral and to 90 degrees, seemingly negative nerve root tension signs. He also has a negative bow string test. These however do produce low back pain. Bilateral straight leg raising in knee chest position are intact and do not show any mechanical signs. Neurologically is intact to the motor and sensory system. He seems to have a decrease in his left knee jerk. Ankle jerk is present bilaterally and symmetrical. He has bilaterally down-going plantar signs. He has no upper motor neuron signs. Examination of his upper extremities is also normal with respect to inspection including skin range of motion, stability, and neurologically with no upper motor neuron signs. X-rays taken in the office today revealed an AP pelvis that looks normal. Lumbar spine in the AP view reveals a slightly postural scoliosis on the left side. Oblique films revealed some pacification of the aorta as well as fairly significant L5-S1 facet disease. Lateral spot films reveal L4-5 and L5-S1 segmental instability in severe degenerative disc disease at L5-S1. An MRI done on the 22nd of September is reported as showing disc protrusion at L4, 5 and L5-S1. The MRI showed there was significant disc on the left side L4-5 and possibly also something at L5-S1. (p. 37)

A MRI of the lumbar spine dated September 22, 2009, indicates that there was a large disc extrusion, L4-5 level with severe compression of the thecal sac. There was prominent central disc extrusion L5-S1 level. There was diffused spondylitic changes. Stable post surgical changes with no significant hypertrophic scar formation. (p. 34)

A September 23, 2009, physical examination indicated that claimant was well-developed, well-nourished white male in no apparent distress. Vital signs: the temperature was 96.3, blood pressure 176/98, pulse 96, respiration 20. Chest was clear to auscultation, the heart rhythm was regular with no murmurs, rubs or extra sounds. The back showed limitation of forward flexion to approximately 45 degrees. There was improvement in the lateral flexion in either direction, however, also lateral rotation. The claimant was able to perform toe walking and heel walking today. He was not able to perform squatting. Deep tendon reflexes are 2+/4+ in patellar tendon and Achilles tendon bilaterally. He does have a positive straight leg raising on the right side in the seated position as well as on the left side. The assessment was chronic low back pain with suspected sciatica, tobacco use disorder and hypertension. (p. 23)

A medical examination report dated February 10, 2010, indicates that claimant was 5'6" tall and weighed 156 pounds and his blood pressure was 136/80. His gait was slightly

antalgic with respect to the left leg. He was normal in all areas of examination except for straight leg raising on the left back range of motion limited the wrist flexion. He cannot perform heel toe walking. His clinical impression is that he was improving and that he could occasionally carry 20 pounds, frequently carry 10 pounds or less and never carry 25 pounds or more. He can stand or walk at least 2 hours in an 8 hour work day and sit less than 6 hours in an 8 hour work day and that he could use both of his upper extremities for simple grasping, reaching, pushing and pulling and fine manipulating, but use only his right lower extremity for operating foot and leg controls. (pp. 5-6)

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 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. The clinical impression is that claimant is stable and improving. 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.

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 cannot perform light or sedentary work even with his impairments. Under the Medical-Vocational guidelines, a younger individual (age 47), with a 11th grade education and an unskilled work history who is limited to light work is not considered disabled.

It should be noted that claimant continues to smoke despite the fact that his doctor has told him to quit. Claimant is not in compliance with his treatment program.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

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. BEM, 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.

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that claimant was not eligible to receive Medical Assistance and/or State Disability Assistance.

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 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.

Landis

/s/

Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: July 28, 2010

Date Mailed: July 29, 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.

LYL/alc

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