

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

IN THE MATTER OF:



Reg. No: 2010-37347
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 3, 2010
Iosco 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 August 3, 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 October 21, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On May 6, 2010, the Medical Review Team approved claimant for State Disability Assistance benefits until March 10, 2010 and denied claimant's application for Medical Assistance stating that claimant impairments lack duration.
- (3) On March 13, 2010, the department caseworker sent claimant notice.
- (4) On March 24, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (5) On July 7, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: Claimant was previously allowed State Disability Assistance benefits November 11,

2009 Medical Review Team determination. Subsequently the Medical Review Team then denied continued State Disability Assistance benefits May 6, 2010, as significant medical improvement had been deemed to have taken place. The preponderance of the evidence supports that significant medical improvement has taken place and the claimant would now retain the ability to return to gainful employment. The evidence further supports that the claimant would be limited to performing no greater than light exertional tasks which do not include overhead reaching or lifting. The claimant's impairments do not meet/equal the intent or severity of a Social Security Listing. The evidence supports the significant medical improvement has taken place. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of light exertional work that does not include overhead reaching or lifting. Therefore, based on the claimant's Vocational Profile of 49 years old at least a high school education and a history of medium semi-skilled and heavy semi-skilled employment, State Disability Assistance is denied per PEM 261. The nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days using Vocational Rule 202.21 as a guide. Medicaid-P and retroactive Medicaid are not in consideration of the claimant's appeal. Listings 1.0, 1.03, 1.04, and 11.14 were considered in this determination.

- (6) Claimant is a 50-year-old man whose birth date is [REDACTED]. Claimant is 5'10" tall and weighs 200 pounds. Claimant is a high school graduate and has an [REDACTED] in Manufacturing and Drafting. Claimant is able to read and write and does have basic math skills.
- (7) Claimant last worked in 2007 driving a semi-truck. Claimant testified that he also has worked as a self-employed excavator, in sales and delivery in excavating.
- (8) Claimant alleges as disabling impairments: degenerative disc disease, neck surgery, right arm numbness, neck fusion, lower back spasms and neuropathy in the bottom of his feet.

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 2007. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant testified that he lives alone in a house and is in the middle of a divorce and he lives off of his children's Adoption Subsidy payments. Claimant has no children under 18 that lives with him and he was receiving \$ [REDACTED] in State Disability Assistance benefits but no longer receives that. Claimant testified that he does have a driver's license and drives two times per day and usually drives 20 miles one way to town to visit his mother. Claimant testified

that he does cook 2 times per day and cooks things like hot dogs and leftovers which are quick and easy. Claimant testified that he grocery shops 2 times per week with no help and he cleans his house by mopping the floors and doing the laundry. Claimant testified that he goes fishing 2 times per week and watches TV for a half an hour to an hour a day. Claimant testified that he can stand for 2 hours, sit for 45 minutes at a time and can walk one block. Claimant testified that he can squat, bend at the waist but it does hurt. Claimant testified that his left knee locks and he is able to shower and dress himself, tie his shoes and touch his toes. Claimant testified that his level of pain on a scale from 1-10 without medication is a 6 and with medication is a 0. Claimant testified that he is right handed and he has some problems with his right hand numbness. Claimant testified that his legs and feet are fine. Claimant testified that the heaviest weight that he can carry is a gallon of milk or 10-15 pounds and he does not smoke and drinks one beer per week and he has never taken drugs besides medication. Claimant testified that in a typical day he gets up and assesses his pain, drinks coffee, take pain medication and goes to visit his mother and stops by the shop. Claimant testified that he had a neck fusion in September 2009 and was in the hospital 1 ½ days.

A physical examination dated June 16, 2010, indicates that the claimant was cooperative in answering questions and following commands. The claimant's immediate, recent and remote memory was intact with normal concentration. The claimant's insight and judgment are both appropriate. The claimant provided a good effort during the examination. He was wearing a T-shirt, jeans, and tennis shoes. He appeared in mild discomfort. His vital signs were blood pressure on the left arm 122/76, pulse was 78 and regular. Respiratory rate was 16, weight was 204 pounds and height was 70" without shoes. The skin was normal other than a 6" incision notes of the anterior neck area and the dorsal lumbar spine. Visual acuity in the right eye was 20/15 and in the left eye was 20/13 without corrective lenses. Pupils were equal, round and reactive to light. The claimant could hear conversational speech without limitation or aid. The neck was supple without masses. The chest breath sounds were clear to auscultation and symmetrical. There was no accessory muscle use. There was regular rate and rhythm without enlargement. There is a normal S1 and S2. In the abdomen there was no organomegaly or masses. Bowel sounds were normal. In the vascular area there was no clubbing or cyanosis detected. There was no edema appreciated. The peripheral pulses were intact. In the musculoskeletal area, there was no evidence of joint laxity, crepitation or effusion. Grip strength remained intact. Dexterity is mildly impaired to the right. The claimant could pick up a coin, button clothing or open a door. The claimant had no difficulty getting on and off the examination table. Mild difficulty heel and toe walking and mild difficulty squatting. There is perincisional tenderness in the cervical spine. There is lumbar spine straightening. Range of motion studies of the joints are in the normal range for all areas but were somewhat reduced in the dorso lumbar spine and cervical spine. In the neurological area: cranial nerves were intact. Motor strength and tone were normal. There was sensory loss at C6 and C7. There is hyperreflexia in both knees and both ankles with hyporeflexia in the right biceps and triceps. Romberg testing is negative. The claimant walks with a wide based gait without the use of an assistive device. The conclusion was degenerative arthritis in the neck and back. He did have continued sensory loss in the right arm, but his grip

strength was preserved. He had mild dexterity loss in the right hand but was able to manipulative tasks. His range of motion was diminished in the neck and back which is typical after his surgeries. He did not have any radicular symptoms in the lower extremities. He does compensate with a wide based gait due to his posture and does not require the use of an assist device. At this point his long term prognosis from an orthopedic standpoint is guarded to poor due to the nature of his injuries and lack of remedial ability. He tries to stay active by doing chores around the house, but avoids any overhead work which would be indicated (pp. 107-110).

A medical examination report dated February 18, 2010, indicates that the claimant is 5'10" and weighed 216 pounds and his blood pressure was 130/90. He had pain in his C-spine but he was normal in areas of examination except he had chronic problems with the c-spine and he was depressed. The clinical impression is that the claimant is stable and need temporary disability with an unknown expected return to work date. He could occasionally lift 10 pounds or less but never lift 20 pounds or more and he could stand or walk less than 2 hours in an 8 hour work day and sit less than 6 hours in an 8 hour work day. He did not require assistive devices for ambulation and he could use his upper extremities for simple grasping, reaching, and fine manipulating but not pushing and pulling and he could operate foot and leg controls with both feet and legs (pp. 16-17).

This Administrative Law Judge did consider all of the more than 100 pages of medical documents contained in the file when making this decision.

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. 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 no disabling mental impairments.

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 cannot perform light or sedentary work even with his impairments.

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: August 16, 2010

Date Mailed: August 17, 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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