

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

IN THE MATTER OF:



Reg. No: 201047760
Issue No: 2009; 4031
Case No: [REDACTED]
Hearing Date:
October 7, 2010
Jackson 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, an in-person hearing was held on October 7, 2010. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED]

This hearing was originally held by Administrative Law Judge Jana Bachman. Judge Bachman 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 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 retroactive Medical Assistance benefits (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 March 29, 2010, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.
- (2) On April 13, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical Vocational Rule 202.11.

- (3) On April 19, 2010, the department case worker sent claimant notice that his application was denied.
- (4) On July 16, 2010, claimant's hearing representative filed a request for a hearing to contest the department's negative action.
- (5) On August 20, 2010, the State Hearing Review Team again denied claimant's application stating in its' analysis and recommendation: the claimant was admitted in December 2009 with complaints of weakness and numbness down the left arm. His syncope was secondary to orthostatic hypotension. His generalized weakness with myalgia was possibly secondary to his medications Zetia. Left upper extremity numbness was possibly related to carpal tunnel syndrome versus diabetic neuropathy. His blood pressure was controlled and his echocardiogram showed no significant abnormalities. He did have some mild degenerative changes in the cervical spine. 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 medium work. The claimant's past work in maintenance was described as light work. Therefore, the claimant retains the capacity to perform his past relevant work. MA-P is denied per 20 CFR 416.920(e). Retroactive MA-P was considered in this case and is also denied.
- (6) The hearing was held on October 7, 2010. At the hearing, claimant waived the time periods and requested to submit additional medical information.
- (7) No additional medical information was submitted and the record for this hearing was closed on April 20, 2011.
- (8) On the date of hearing claimant was a 55-year-old man whose birth date is [REDACTED]. Claimant is 5'8" tall and weighs 310 pounds. Claimant attended the 10th grade and had a CDL driver's license for small trucks and limousines. Claimant is able to read and write and does have basic math skills.
- (9) Claimant last worked in 2001 doing maintenance in a trailer park. Claimant has also worked as a self-employed carpet cleaner.
- (10) Claimant alleges as disabling impairments: chronic obstructive pulmonary disease (COPD), shortness of breath, dizziness, bone disease, back and leg problems, blood pressure and heart problems and memory problems as well as poor vision due to a torn retina, hypertension, sleep apnea, a bad back, and headaches.

CONCLUSIONS OF LAW

The regulations governing the hearing and a ppeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An oppor tunity for a hearing shall be granted to an ap plicant who requests a hearing because his or her clai m for assistance has been den ied. MAC R 400.903(1). Clients h ave the right to contes t a department decision affecting elig ibility or benefit levels whenever it is believed that the decis ion is incorrect. The department will provide an adm inistrative hearing to review the dec ision and determine the appropriateness of that decision. BAM 600.

The Medical Assistance (MA) program is estab lished by Title XIX of the Social Sec urity Act and is implem ented by T itle 42 of the C ode 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 determi ning eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...the inability to do any substant ial gainful activity by reason of any medically determinable ph ysical 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 deter mine disability . Current work activity, severity of impairments, residual functional capacity, past wor k, 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 experienc e. 20 CFR 416.920(c).

If the impairment or combination of impair ments do not signific antly limit physica l or mental ability to do basic work activities, it is not a severe impairment(s) and disab ility does not exist. Age, education and work ex perience will not be c onsidered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medic al signs and laboratory findings wh ich demonstrate a medical im pairment.... 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 2001. Claimant is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence on the record indicates that claimant testified on the record that he lives with his wife and he had a driver's license and was able to drive but seldom did drive because of eye problems and dizzy spells. Claimant did not cook, grocery shop or do any housekeeping duties or yard work. Claimant testified that in a typical day he uses his C-PAP machine and his legs felt heavy and painful with frequent exertion and he had chest pain with numbness in his left arm. Claimant testified that he had daily back pain, which increases when he moves around. He has a headache all day and is worse as the day continues, he has floaters in his eyes, he is very dizzy and when he changes positions and sometimes when there is no change in position. Claimant also testified that he has a poor memory. Claimant stated that he could walk a few yards, stand for less than an hour, sit for less than an hour and carry 20 pounds. Claimant testified that he was right handed and his pain on a scale from 1-10 without medication is a 10 and with medication is an 8. Claimant testified that he does not smoke, but he rarely takes a couple drinks of alcohol. The claimant was admitted in December 2009 with complaints of weakness and numbness down the left arm (p. 31). His syncope was secondary to orthostatic hypotension. His generalized weakness with myalgia was possibly secondary to his medication Zetia (p. 31). Left upper extremity numbness was possibly related to carpal tunnel syndrome versus diabetic neuropathy (p. 31). His blood pressure was controlled (p. 30).

A cardiology consult in December 2009 indicated that claimant had single vessel disease and angioplasty in 2004 without stent placement (p. 40). Cardiac catheterizations in 2006 & 2007 showed the diagonal was open and there were no other blockages. The claimant was 296 pounds (p. 39). His ECG was unremarkable. He had low potassium (p. 38). An echocardiogram showed an ejection fraction of 55% with no other abnormalities (p. 32). A neurologic consult in December 2009 showed the claimant's mental status was intact. His motor examination revealed normal muscle tone, bulk and strength in all 4 extremities. Muscle strength reflexes were graded as 2 with the exception of absence at the left ankle (p. 35). Sensation was intact with the exception of decreased pin prick in the left first 3 digits of the hand. He had a normal based steady casual gait (p. 34). A component of orthostatic hypotension was suspected (p. 33).

An MRI of the cervical spine in December 2009 showed relative mild degenerative changes of the cervical spine (p. 32).

At Step 2, claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment or combination of impairments that has lasted or is expected to last for the duration of at least 12 months. Although there is sufficient objective clinical medical evidence in the record that claimant suffers a severely

restrictive physical or mental impairment, at least at the time he was hospitalized, claimant's condition was stabilized when he was discharged from the hospital and it does not appear that claimant's impairments meet duration. Claimant has reports of pain in multiple areas of his body; however, there are insufficient 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 or combination of impairment's which meet duration. Therefore, claimant is disqualified from receiving disability at step 2.

Claimant alleges the following disabling mental impairments: memory problems.

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. However, this Administrative Law Judge will proceed through the sequential evaluation process for the sake of argument because step 2 is a de minimus standard.

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 insufficient objective medical evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform any 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 again 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's past work in maintenance was described as light work. Therefore, claimant retains the capacity to perform not only his past relevant work but also a wide variety of light work. 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 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 or retroactive Medical 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 and retroactive Medical 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 Maura D. Corrigan, Director
Department of Human Services

Date Signed: June 21, 2011

Date Mailed: June 21, 2011

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.

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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

cc:

