

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

IN THE MATTER OF:



Reg. No: 2010-19004
Issue No: 2009; 4031
Case No: [REDACTED]
Hearing Date:
March 23, 2010
Tuscola County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain for Marlene Magyar

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 March 23, 2010. Claimant did not appear for the hearing. However, his mother, step-father and grandmother appeared to testify on his behalf and his mother appeared as his authorized representative.

This hearing was originally held by Administrative Law Judge Marlene Magyar. Marlene Magyar 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), retroactive Medical Assistance (retro 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 December 16, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On January 19, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work.

- (3) On January 22, 2010, the department caseworker sent claimant notice that his application was denied.
- (4) On February 2, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (5) On February 25, 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) pursuant to Vocational Rule 202.20.
- (6) The hearing was held on March 23, 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 October 21, 2010.
- (8) On October 28, 2010, the State Hearing Review Team again denied claimant's application stating in its' analysis and recommendation: this claim was filed in December 2009 with retro to September 2009. The claimant appeared to have an exacerbation of his crohn's about the time of the application. The claimant is 72" tall or 6'. His weight was 120.5 in January 2010 (Exhibit 1, p. 56). In December 2010 his weight was 115 pounds and his BMI was 15.5. In May 2010 his weight was 127 pounds. While he did have significant weight loss he did not meet a second progress listing .506. His condition was improving with treatment. The claimant also had some depression but his mental status was unremarkable. 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 simple unskilled light work. In lieu of detailed work history the claimant will be returned to other work. Therefore, based on the claimant's vocational profile of a younger individual, 12th grade education and a history of unskilled work, 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.
- (9) On the date of hearing claimant was a 26-year-old man whose birth date is [REDACTED]. Claimant is 6' tall and weighs 120 pounds. Claimant is a high school graduate, is left handed and has a valid driver's license.
- (10) Claimant last worked November 2009 as a [REDACTED].

- (11) Claimant alleges as disabling impairments: crohn's disease, anemia, mal nutrition, fatigue, weakness, depression, chronic diarrhea.

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

The objective medical evidence on the record indicates that a May 5, 2010, medical report indicates that claimant weighed 127 pounds, his height was 72", his BMI was 17.2. In general claimant was pale with a rash around the mouth. He was alert, well-nourished and appeared his stated age. He was in no acute distress. HEENT: Normocephalic, conjunctivae and lids were normal. Pupils were equal. Ears and nose normal to external inspection. Mucosa moist, pink lips and gums unremarkable. The neck was symmetrical, the trachea was midline with no thyromegaly. The respiratory had good effort/excursion bilaterally. He was clear to auscultation bilaterally. Cardiovascular S1 & S2, no precordial heave. In the abdomen there was no tenderness, no masses and no hepatosplenomegaly. The abdomen was non-distended: no palpable nodes in the neck or supraclavicular. The nails were unremarkable. The gait, range of motion and stability was within normal limits. Stress was equal bilaterally to lower and upper extremities. Claimant had gained 5 pounds and was diagnosed with anemia, mal-nutrition, reactive depression, minimal hair loss and crohn's disease (p. A1).

A mental status examination dated May 17, 2010, reveals that claimant reported being 6' tall and weighing 130 pounds. He was casually dressed. Claimant's hygiene and grooming appeared to be poor. His hair and beard were unkept. He admitted an odor. He last showered a couple of days before the meeting. He said that showering wears him out. He does not require assistance in scheduling and keeping appointments. With directions, claimant was able to find locations independently. He appeared to be in contact with reality throughout the examination. His gait and posture appeared to be normal. He is unable to walk long distances due to fatigue. Claimant's psychomotor activity level appeared to be normal. He did not seem to exaggerate or minimize symptoms. His self esteem was described as neutral. He was cooperative during the examination. His speech was unimpaired. Claimant's stream of mental activity was

spontaneous and organized. There was no significant evidence of hallucinations, delusions, persecutions, obsessions, thoughts controlled by others or unusual powers. Claimant reported problems sleeping at times. He denied any suicidal or homicidal ideation. He has never attempted suicide. He denied current suicidal or homicidal intent (p. B2).

Claimant appeared to be oriented to time, person and place. His immediate memory he could remember 6 numbers forward and 3 backward. In his recent memory he could recall 3/3 objects 3 minutes later. In past memory he stated recent past presidents are Bush, Clinton, Bush and Regan. Claimant's birth date was correctly identified as [REDACTED]. Claimant stated that the current president is Obama and that 3 large cities are Detroit, San Francisco and Miami. Two famous people are Clint Eastwood and Tom Cruise and the current event is the oil spill. On calculations he stated $3+4=7$, $8-3=5$, $2*4=8$ and $10/2=5$. Subtracting 7's from 100 he stated it was 93, 86, 79, 72, and 65. In abstract thinking, the grass always looks greener on the other side, means that life always looks better on the outside looking in. When asked what don't count your chickens before they hatch mean he said don't plan anything. He stated that a bush and a tree are alike because they are both plants and they are different because the tree is bigger. Claimant testified that if he found a fire in a theatre he would run, if he found an addressed stamped envelope on the ground he would put it in the mailbox and he didn't have any future plans. The psychologist indicated that it was his impression that claimant's mental abilities to understand, attend to, remember and carry out instructions are not impaired. His abilities to respond appropriately to coworkers and supervision and to adapt to change and stress in the workplace are moderately impaired. He was diagnosed with a major depressive disorder and a current GAF of 53. His prognosis was guarded and he was able to manage his own benefits funds (B3-B4).

A medical examination in the file dated January 7, 2010, indicates that claimant was 6' tall and weighed 120.5 pounds. His blood pressure was 92/58 and he was right hand dominant. The clinical impression that claimant was deteriorating. He could never lift any weight and he could stand or walk less than 2 hours in an 8 hour work day and he could not use his upper extremities for simple grasping, reaching, pushing and pulling and fine manipulating and could not operate foot or leg controls and he had no mental limitations (Exhibit 1, p. 56-57) however the document was not signed with a doctor signature.

Claimant did not appear at the hearing so that the Administrative Law Judge could make an assessment of claimant. The Administrative Law Judge was forced to rely upon the witness statements and the medical documents contained in the file.

A December 18, 2009, medical examination report indicates that claimant has crohns disease and that the clinical impression is that he was deteriorating. He could occasionally carry 10 pounds and could frequently carry less than 10 pounds but could never carry 20 pounds or more. He could stand or walk less than 2 hours in an 8 hour work day and he can use his upper extremities for simple grasping, reaching, pushing,

pulling, and fine manipulating and he could operate foot and leg controls with both feet and legs but was extremely weak and fatigued due to crohn's disease. He had no mental limitations (Exhibit 1, p. 16-17).

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 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 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 26), with a high school education and an unskilled work history who is limited to light work is not considered disabled pursuant to Medical Vocational Rule 202.20.

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.

/s/

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

Date Signed: July 25, 2011

Date Mailed : July 26, 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.

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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