

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No: 2010-9414
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 21, 2010
Macomb 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 January 21, 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 retroactive Medical Assistance (retro MA-P)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

(1) On January 28, 2009, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.

(2) On August 18, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical Vocational Rule 201.28.

(3) On August 27, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On August 31, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On December 8, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The claimant is status post lumbar laminectomy/spinal fusion in [REDACTED]. He has limited range of motion and muscle spasms but no neurological abnormalities. The claimant's treating physician has given less than sedentary work restrictions based on the claimant's physical impairments. However, this medical source opinion (MSO) is inconsistent with the great weight of the objective medical evidence and per 20 CFR 416.927c(2)(3)(4) and 20 CFR 416.927d(3)(4)(5) will not be given controlling weight. The collective objective medical evidence shows that the claimant is capable of performing light work. The claimant's impairments 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 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, high school equivalent 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.

(6) Claimant is a 34-year-old man whose birth date is [REDACTED] Claimant is 6' 1" tall and weighs 160 pounds. Claimant attended the 10th grade and does have a GED. Claimant is able to read and write and does have basic math skills.

(7) Claimant last worked September 26, 2008 as an industrial painter. Claimant has also worked doing lawn maintenance and as a tattoo artist.

(8) Claimant alleges as disabling impairments: degenerative disc disease, attention deficit hyperactive disorder, low back pain, and a spinal laminectomy in [REDACTED].

CONCLUSIONS OF LAW

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 2008. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that the claimant has low back pain, degenerative disc disease, and is status post lumbar laminectomy/spinal fusion in [REDACTED]

[REDACTED] He has limited range of motion of the spine and muscle spasms in the bilateral lumbar area. There are no neurological abnormalities noted. (p. 7)

A Medical Examination Report in the file from [REDACTED] indicates that claimant was normal in all areas of examination except that he had pain that is 8 out of 10 and a slow, guarded gait and was slightly bent forward. Claimant also had limited range of motion, flexion of 20 degrees, extension of 10 degrees and paraspinous muscle spasms in the bilateral lumbar spine. The MRI of the lumbar spine showed disc bulges of the lower lumbar spine muscles at L5-S1 with mid central canal stenosis on [REDACTED]. On that date claimant was 73" tall and weighed 182 pounds and his blood pressure was 112/80 and he was right-hand dominant. His visual acuity was 20/20 in each eye. The clinical impression was that claimant was stable, and that he could occasionally lift 10 pounds or less, but never lift 20 pounds or more. He could stand or walk less than 2 hours in an 8-hour workday and could sit less than 6 hours in an 8-hour workday. Claimant could do simple grasping, reaching, pushing/pulling, and fine manipulating with both upper extremities but could not operate foot and leg controls because he could not perform repetitive motion of bending, twisting, pushing/pulling and still had significant pain with muscle spasms in his back. Claimant had no mental limitations. (pp. 7-8 of the medical reports)

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 his back and multiple areas of his body; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. The DHS-49 at page 8, indicates that the examination areas are normal with the exception of the musculoskeletal area which shows that claimant has limited range of motion of flexion 20 degrees and extension 10 degrees and he has paraspinous muscle spasms in the bilateral lumbar

spine. There are no additional laboratory or x-ray findings listed. There are no statements in the file that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. The clinical impression is claimant's condition is stable. The form indicates that assistive devices are medically required for ambulation. 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 no evidence on the record indicating claimant suffers mental limitations resulting from his reportedly bipolar state. There is no mental residual functional capacity assessment in the record. Claimant did testify that he was in a psychiatric hospital for 8 days approximately three months before the hearing, but there is no objective medical evidence in the record to support claimant's contention.

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).

The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. Claimant was able to answer all of the questions at the hearing and was responsive to the questions. Claimant was oriented to time, person and place during the hearing. There is no objective medical 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. 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 some of his past relevant work. Claimant has worked as a lawn maintenance person and as an industrial painter. With his back condition, he may not be able to conduct either of those jobs. However, claimant has also worked as a tattoo artist. This Administrative Law Judge finds that there is no medical 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 and he could probably work as a tattoo artist even with his impairments. Therefore, if claimant had not already been denied at Step 2, he would be denied again at Step 4.

The claimant did submit an additional letter from his doctor stating that he could not work. 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 testified on the record that he lives with his mother in a condominium and that he is single with no children under 18 who live with him. Claimant does have children who come over and visit with him. Claimant testified that he has no income and that he receives Food Assistance Program benefits. Claimant testified that he does drive daily to doctor's appointments and other places. Claimant testified that he does have a driver's license. Claimant testified that he

cooks 3 times a day and cooks things like hamburger and spaghetti and that he grocery shops 2 times per month with no help. Claimant testified that he vacuums and does the dishes. Claimant testified that he can stand for 20 minutes at a time, sit for an hour at a time, walk a quarter mile, and squat but not bend at the waist. Claimant testified that he can shower and dress himself, tie his shoes, and he touches his toes if he's sitting. Claimant stated that his level of pain on a scale from 1 to 10 without medication is a 9 and with medication is a 6/7. Claimant testified that he does have some numbness and tingling in his hands and arms from his back condition and that he has numbness and tingling in his legs. Claimant testified that the heaviest weight he can carry is 20-25 pounds and that he does smoke a half a pack of cigarettes per day and his doctor has told him to quit but he's not in a smoking cessation program.

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.

Examples of light or sedentary, unskilled jobs that claimant can do: are an usher, counter clerk, surveillance system monitor and a furniture/rental consultant in a retail business. County business patterns show that over 751,000 workers are employed in Michigan retail industries, indicating that such jobs exist in significant numbers in this region's economy. Over 30,000 workers are employed in Michigan in amusement and recreational services in which usher jobs are prevalent. Over 15,000 people are employed in public transportation and over 127,000 are employed in general merchandise stores, photo finishing, laboratories and photography supply stores, indicating such jobs exist in significant numbers in this region's economy.

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. In addition, claimant did testify that he does receive some relief from his pain medication. 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 at 201.28 and 201.20, a younger individual (age 34), with a high school education and an unskilled work history who is limited to light work is not considered disabled.

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.

/s/ _____
Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: March 23, 2010

Date Mailed: March 23, 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/vmc

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