

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: 2010-10594
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 4, 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 February 4, 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 July 21, 2009, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.
- (2) On September 30, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical Vocational Rule 202.15.

(3) On October 1, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On November 3, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On December 22, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation:

The claimant is obese at 450 pounds. His fine and gross dexterity is intact. His gait was slow and he is mostly limited by his obesity. The claimant retains the physical residual functional capacity to perform at least sedentary work. The claimant's past work was as a drafting designer performed at the sedentary exertional level. Therefore, the claimant retains the capacity to perform his past relevant work. MA-P is denied per 20 CFR 416.920(a). Retroactive MA-P was considered in this case and is also denied.

(6) Claimant is a 54-year-old man whose birth date is [REDACTED] Claimant is 6' tall and weighs 492 pounds. Claimant is a high school graduate and testified that he has dyslexia and can read and write at the 4th grade level. Claimant does have basic math skills and stated that he has college level math skills.

(7) Claimant last worked in 2008 designing [REDACTED] equipment. Claimant has also worked for 20 years as an auto designer, working at a computer and designing tools for car parts.

(8) Claimant alleges as disabling impairments: hypertension, diabetes mellitus, back and neck problems as a result of a motor vehicle accident, knee and ankle arthritis, leg swelling, sore kneecaps, and blurred vision, as well as dizzy headaches.

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/has been receiving Unemployment Compensation Benefits in the amount of \$ [REDACTED] every two weeks, which amounts to \$ [REDACTED] per month in Unemployment Compensation Benefits.

In order to be eligible to receive Unemployment Compensation Benefits, a person must be monetarily eligible, must be totally or partially unemployed. A person must have a provable job separation, and a person must meet certain weekly legal requirements; weekly requirements include being physically and mentally able to work, being available for and seeking work and filing weekly claims for benefits on a timely basis. This Administrative Law Judge finds that claimant is disqualified from receiving disability at Step 1 because he has held himself out as being physically and mentally able to work and being able and seeking work based upon his receipt of Unemployment Compensation Benefits. Therefore, his allegation that he is disabled is inconsistent with his receipt of Unemployment Compensation Benefits.

The objective medical evidence on the record indicates that as of an internal medical examination of September 11, 2009, claimant was 6' tall and weighed 490+ pounds. His pulse was 90, his respiratory rate was 16, his blood pressure was 180/92. His visual acuity with glasses in the right eye was 20/40 and the left eye was 20/80. He was morbidly obese. HEENT: normocephalic/atraumatic. His pupils were equal, round and reactive to light. Extraocular muscles were intact. Sclera were non-icteric. Oropharynx was clear without any lesions. The neck revealed some stiffness and limitation to range of motion, but no deformity, no thyromegaly. Respiratory system: the chest was clear to auscultation bilaterally. No rales,

wheezing or rhonchi. No retractions or accessory muscle usage. Cardiovascular: There was a regular rate and rhythm. No rubs, murmurs or gallops. Gastrointestinal: The abdomen was massively obese. No organomegaly. No rebound or guarding. No palpable masses. In the extremities, the patient had a short-stepped gait. He does not use an ambulation aid. His stance was normal. He can only walk about ½ a block. He can stand for only 5 minutes and then his knee gives out. He can only sit for ½ an hour at a time. He has difficulty working overhead due to severe pain in his neck and numbness in his arms. There is no joint deformity or enlargement. The patient was able to get on and off the examination table. His straight leg raising was about 60 degrees bilaterally from a lying position. He was unable to squat. Neurological: Generally, the patient was alert, awake and oriented to person, place and time. Cranial nerves II through XII were intact. Sensory functions were intact to sharp and dull gross testing. Motor examination reveals fair muscle tone without flaccidity, spasticity or paralysis. The impression in fine and gross dexterity intact. The patient is right handed. The patient had good hand grip bilaterally. Tinel and Phalen signs were negative. There is no atrophy or sensory changes. In ambulation, the patient had a very slow gait, which was short steps. The patient is massively obese and has limitation of squatting. He also has limitations with excursion of his lumbosacral spine. He has chronic back pain while walking, secondary to traction of his massive abdomen. He was unable to tandem walk. He has osteoarthritis and spinal disorder. The patient has massive body habitus and his weight is in the 450+ pound range. There is no joint deformity or enlargement. There was no evidence of contraction, but his body habitus limits his ability to squat or bend forward or backward. There were no circulatory deficits. There was no circumferential measurement discrepancy. His gait was otherwise stable. The patient has had diabetes for 15 years. He has difficulty controlling his blood sugar and obtaining supplies to check his blood sugar at home. His weight and eating habits probably interfere with getting reasonable numbers for his diabetes

or in controlling his blood sugar. The patient reports that his kidney function is stable. He gets numbness in his feet and hands occasionally, but not continuously. There is no history of peripheral vascular disease. Fundus examination showed no papilledema, or evidence of retinopathy. (Pages 14-16)

A medical examination report, dated July 2, 2009, indicates that claimant was 6' tall and weighed 470 pounds. His blood pressure was 118/74. He was normal in all areas of examination except that he was morbidly obese and had difficulty breathing, but his clinical impression was that he was stable. That report was filled out by an endocrinology doctor on August 20, 2009. (Pages 2, 3)

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 a 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 did testify that he does not have any mental impairments. 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. The medical reports indicate that claimant is somewhat limited based upon his morbid obesity, but his fine and gross dexterity are intact. He is able to ambulate without assistance. Claimant testified that he is able to cook all meals sitting down, and that he cooks things like fish and chicken sandwiches. Claimant does have a driver's license and does drive three times a week. He drives to the park with his dog. He has a chocolate Labrador retriever. Claimant testified that he does cut his grass with a riding lawnmower, and his hobby is doing genealogy work. Claimant testified that he could stand for 15 minutes, sit for an hour, and that he can walk to the 7-11 Store. Claimant testified that he cannot squat, but he can bend at the waist a little. He can shower and dress himself from a chair, but he can't tie his shoes

or touch his toes. Claimant testified that his level of pain on a scale from 1 to 10 without medication is a 5 to 6. Claimant testified that his right wrist hurts and that his knees also hurt, and that the heaviest weight he can carry is 20 pounds. Claimant testified that in a typical day, he cooks, takes his medication, sits down and watches television, has lunch, pays his bills, and then watches more TV. Claimant testified that he does have some problems going down stairs.

The clinical impression is that claimant is stable. There is no 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.

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. Claimant's past relevant work was sedentary and light work. As an auto designer working on a computer does not require strenuous physical exertion, there is insufficient objective medical/psychiatric evidence upon which this Administrative Law Judge can base a finding that

claimant is unable to perform work 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.

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. Claimant did testify that he does receive relief from the 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.

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

