

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: 2010-11089

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

January 27, 2010

Jackson 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, an in-person hearing was held on January 27, 2010. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED]

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 November 25, 2008, claimant filed an application for Medical Assistance and State Disability Assistance, as well as retroactive Medical Assistance benefits alleging disability.

(2) On June 11, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical Vocational Rule 202.21.

(3) On July 15, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On October 2, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On December 14, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation:

The claimant has a history of left shoulder rotator cuff repair in 1998, left ankle fracture and surgical repair in 2001 and right ankle fracture and surgical repair in July 2008. He had no complaints of pain in his shoulders. He had pain and restricted range of motion of both ankles, but was able to ambulate without assistance. The claimant would be able to do at least sedentary 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 sedentary 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, age 45, high school education and history of unskilled work, MA-P is denied using Vocational Rule 201.18 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 impairments would not preclude work activity at the above-stated level for 90 days.

(6) Claimant is a 45-year-old man whose birth date is [REDACTED] Claimant is 5' 6" tall and weighs 150 pounds. Claimant is a high school graduate and also received a

certificate from a technical institute for welding. Claimant is able to read and write and does have basic math skills.

(7) Claimant is currently employed as a home health care aide, dispensing medication. Claimant works about 20 hours a week and earns \$ [REDACTED] per month. Claimant has been doing this from 2002 until the present.

(8) Claimant has been a self-employed maintenance worker, remodeling and installing floors. Claimant has also worked as a welder and a carpenter.

(9) Claimant alleges as disabling impairments: arthritis, left rotator cuff repair, asthma, right and left ankle pain, and chronic arthritis.

(10) Claimant alleges no mental impairments.

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 currently working as a home health care aide, working approximately 20 hours per week, earning \$ [REDACTED] per month. This Administrative Law Judge finds that claimant is not engaged in substantial gainful activity and is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a [REDACTED] Medical Examination Report indicates that claimant is not weight-bearing on his right foot, but he is normal in all areas of examination, and that he had a right distal fibular and calcaneal fracture. Claimant only had a temporary disability and was at that time non-weight-bearing. He could do simple grasping, reaching, pushing and pulling, and fine manipulating with both upper extremities and could operate foot and leg controls with his left foot/leg. (Pages 32, 33) The claimant had surgery to repair his fracture on August 4, 2008, and was stable. He was placed in a cast for six weeks. The plan was to allow him to progress to weight-bearing with either a boot or a cast within the six weeks. (Page 26, 27)

On August 4, 2008, claimant was 5' 7" tall and weighed 150 pounds. His BMI was 23.5 and his blood pressure was 160/90. He had no chest pain or shortness of breath. HEENT: Pupils are equal, round and reactive, neck had full range of motion. Cardiovascular: There was regular rate and rhythm. Respiratory was clear to auscultation. Alveolar was soft and non-tender. Extremities on examination, pain and tenderness with decreased range of motion. In the neurological area, he had no focal deficits. He had a right ankle fracture and right calcaneous fracture. The plan was open reduction-internal fixation right ankle and percutaneous pinning versus open reduction-internal fixation right calcaneous with or without subtalar fusion. (Page 22)

A medical examination report, dated June 4, 2009, indicates that claimant should be restricted from prolonged standing, walking and climbing on a permanent basis. He has a disability involving both ankles, which in the opinion of the doctor was permanent. The doctor recommended a sit-down type job, his ability to ambulate is limited. His prognosis was guarded. He may benefit from ankle fusion in the future. The doctor's impression was that he had post-fracture of bilateral ankles with traumatic arthritis and chronic pain of bilateral ankles with restricted motion. On evaluation, claimant was 5' 6" tall and weighed 160 pounds. On ambulation, he ambulates slowly and favors both ankles. He is unable to stand on toes and heels. No scoliosis. He has normal lumbar lordosis. He has full lumbar range of motion to flexion, extension, as well as side bending without pain. He has no tenderness or spasms to palpation in the lumbar paravertebral area. On evaluation of the lower extremities, the right thigh measures 15" in circumference, the left thigh 14" in circumference. The right calf measures 12" in circumference, and the left calf 11" in circumference. Reflexes are 2+ and symmetrical in the knees and ankles. Sensation to light touch is maintained. Extensor hallucis longus musculature is strong bilaterally. Straight leg raising is negative. On evaluation of the ankles, both ankles measured 9" in circumference, measuring over the malleoli. Both feet measured 9.5", measuring mid-aspect. Concerning the right ankle, he has a 6.5" hockey stick, length surgical scar, lateral aspect. This is well healed. He had some tenderness associated with this. He has restricted motion of his right ankle. He has approximately 20 degrees plantar flexion only. He has restricted inversion and eversion. He has pes planus. On evaluation of the left ankle, he has three surgical scars, a 4.5" medial scar, a 5" anterior scar and a 4" hockey stick lateral scar which are all healed. He has generalized tenderness to palpation about the left ankle. He has approximately

15 degrees plantar flexion only. He has restriction of inversion and eversion. He has tenderness over the anterior aspect of the ankle joint. He has pes planus. (Pages 11, 12)

Claimant testified that he cooks one time per day and cooks things like eggs. Claimant lives with a friend in a house and is single with no children under 18. Claimant makes his bed. Claimant is able to stand for 5 to 10 minutes, sit for 45 minutes to 1 hour at a time, and could walk 50 yards. Claimant cannot squat, but he can bend at the waist, shower and dress himself, tie his shoes. Claimant testified that he cannot touch his toes, but his back is fine and he has pain in his left knee. Claimant testified that his level of pain on a scale from 1 to 10 without medication is an 8, and with medication it is also an 8. Claimant testified that he takes Tylenol only, and that he is right-handed and that his hands and arms are fine. Claimant testified that he can carry 5 to 10 pounds, and that he smokes a pack of cigarettes per day.

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 that has kept him from working for 12 months. Claimant is currently working 20 hours per week as a home health care aide, dispensing medication. This is an indication that claimant can perform sedentary work. Claimant does have limitations based upon both ankles having been broken or fractured and he does have limited range of motion in his ankles, which prevents him from walking long distances or from carrying heavy weights; however, there is insufficient objective medical evidence that claimant is unable to perform sedentary work, which is what he is currently doing. Therefore, this Administrative Law Judge finds that the medical record is insufficient to establish that

claimant has a severely restrictive physical impairment which has kept him from working for a period of 12 months or more.

Claimant testified on the record that he has no mental limitations. There is no mental residual functional capacity assessment in the record. 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 the 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 has been working for at least the past 40 years as a home health care aide, dispensing medication. Claimant's past relevant work is sedentary work. There is no medical evidence contained in the file upon which this Administrative Law Judge could base a finding that claimant is unable to continue to perform the work which he is currently engaged in. 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).

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 sedentary tasks if demanded of him. Claimant's activities of daily living do not appear to be severely limited and he should be able to continue to perform sedentary work even with his impairments. The claimant's testimony as to his limitations indicates that he should be able to perform 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. 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 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.

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 sedentary work even with his impairments. The department has established this 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

Adm
Departm

Date Signed: May 24, 2010

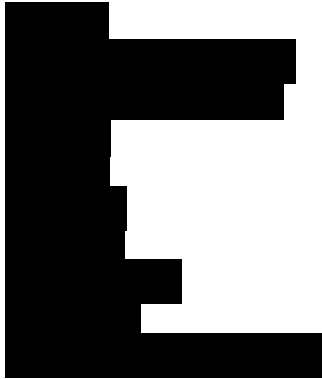
Date Mailed: May 25, 2010

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/cv

cc:

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