

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: 2010-20997

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 6, 2010

Ingham 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 April 6, 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) 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 27, 2009, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits for the months of April, May and June 2009, alleging disability.

(2) On November 9, 2009, the Medical Review Team denied claimant's application stating that claimant's impairments lack duration.

(3) On November 17, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On February 12, 2010, claimant filed a request for a hearing to contest the department's negative action.

(5) On March 9, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the claimant has a history of one myocardial infarction in May 2009. He has a stent placed at that time. In June 2009, he underwent coronary artery bypass grafting. He continued to a typical chest pain which the cardiologist felt was likely to the healing of his sternotomy. In October 2009, he continued to smoke and his blood pressure was elevated but he had no evidence of congestive heart failure. He walked slowly and was anxious. The doctor thought the claimant have a learning disability. However, the claimant has worked and does have substantial work activity. The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that claimant retains the capacity to perform a wide range of simple unskilled light work. In lieu of detailed work history the claimant will be returning to other work. Therefore, based on the claimants Vocational Profile of a younger individual, high school education and 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) The hearing was held on April 6, 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 April 7, 2010.

(8) On April 14, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: claimant is capable of performing work in the form of light work per 20 CFR 416.967(b) and unskilled work per 20 CFR 416.968(a) pursuant to Medical Vocational Rule 202.20. The State Hearing Review Team also commented that this may be consistent to past relevant work. However, there is no detailed description of past work to determine this. In lieu of denying benefits as capable of performing past work a denial to other work based on Vocational Rule would be used.

(9) Claimant is a 49-year-old man whose birth date is [REDACTED] Claimant is 5' 8" tall and weighs 224 pounds. Claimant attended the 11th grade and does have a GED. Claimant is able to read and write and does have basic math skills.

(10) Claimant last worked May 2009, for [REDACTED] as a tire technician changing tires where he worked for approximately 8 years before he had a heart attack. Claimant has also worked and [REDACTED] warehouse as an order puller, lifting 50 pound boxes and for a produce company pulling orders. Claimant does receive \$ [REDACTED] per month in unemployment compensation benefits, because he got laid off when he was getting ready to go back to work.

(11) Claimant alleges as disabling impairments: 3 heart attacks, shortness of breath, bypass surgery, memory problems, hypertension, asthma, coronary artery disease, a stutter and slow speech which he did not have before his heart attacks, and a double bypass operation.

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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) 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 May 2009. Claimant is not disqualified from receiving disability at Step 1.

In addition, claimant does receive unemployment compensation benefits. In order to receive unemployment compensation benefits under the federal regulations, a person must be monetarily eligible. They must be totally or partially employed. They must have an approvable job separation. Also, they must meet certain legal requirements which include being physically and mentally able to work, being available for and seeking work, and filing a weekly claim for benefits on a timely basis. This Administrative Law Judge finds that claimant has not established that he has a severe impairment or combination of impairments which have lasted or will last the durational requirement of 12 months or more or have kept her from working for a period of 12 months or more. Claimant did last work May 2009. Claimant does received unemployment compensation benefits in the amount of \$ [REDACTED] per month. In order to receive unemployment compensation benefits a person must be monetarily eligible, must be totally or partially unemployed, and must have an approval job separation. The person must meet certain weekly legal requirements which include being physically and mentally able to work, being available for and seeking work and filing weekly claims for benefits on a timely basis. In the instant case, claimant is disqualified from receiving disability at step 1 because he does receive

unemployment compensation benefits and does hold himself out as available for and seeking work and as being physically and mentally able to work.

The objective medical evidence on the record indicates that the claimant was admitted in May 2009, due to a myocardial infarction and a cardiac catheterization and stenting to the left anterior descending coronary artery (LAD). His ejection fraction was 45% (p. 46). The claimant was admitted again in [REDACTED] due to chest pain. Cardiac catheterization revealed his stent was patent. He did have multivessel disease in other vessels but no critical lesions, the surgery was recommended. (p. 52) The claimant was admitted later in [REDACTED] and underwent coronary artery bypass grafting. (p. 54) In September 2009, the claimant was seen in the cardiology clinic for evaluation of a typical chest discomfort. (p. 6) The doctor found that the chest pain was likely related to the healing of his sternotomy. (p. 8) In October 2009, the claimant was involved in cardiac rehab (p. 3). The claimant had a speech impediment and he appeared extremely anxious. The claimant was 68' tall and weighed 212 pounds. His blood pressure [REDACTED]. He had chest wall tenderness over the well healed surgical scar it was a small keloid. (p. 4) He had mild paraspinal tenderness and mild tenderness of the knees. He slightly demonstrated normal range of motion of the neck, back, shoulders, wrists, hands, hip, ankles and feet. He ambulated slowly but did not appear to need an ambulatory aid. Neurological findings grossly intact. (p. 5) Claimant was admitted to the hospital February 16, 2010, and discharged February 17, 2010, for chest pain. He denied having any nausea, vomiting, dizziness and diaphoresis. He had cardiac enzymes showing a mild elevation of Troponin of 0.15. His other enzymes showed normal Troponin values, CK-MB at 225, and 228. His CK-MB was 2.0 and 2.0. He was set up for a myoview stress test. He went seven meds with no worsening of baseline EKG changes. His nuclear portion showed no evidence of ischemia. There was a moderate sized

interior apical infarction. Ejection fraction of 36%. At that time, they discontinued medical therapy for the patient as he had no spurs of symptomology and he was deemed appropriate for discharge with follow-up with a primary care physician in one to two weeks. He had a total cholesterol of 185, triglycerides of 176, HDL of 31, LVL of 119. (new information, claimants exhibit, p. 1) A medical examination report dated January 25, 2010, indicates that claimant's clinical impression is that he is stable and deteriorating because his blood pressure is not under control and that he can frequently lift less than 10 pounds and occasionally lift 10 pounds but never lift 20 pounds or more. He could stand or walk less than 2 hours in an 8 hour day. He could use his upper extremities for simple grasping, reaching, pushing and pulling and fine manipulating and could operate foot and leg controls with both feet and legs. He had some mental limitations as he was depressed and he had shortness of breath and chest pain. (pp. 12-13 of new information) Claimant testified on the record that he can stand for 2 hours, sit for 2-3 hours at a time, and he could walk 3-4 blocks. Claimant is able to squat, bend at the waist, shower and dress himself, tie his shoes and touch his toes. His back is fine and his knees hurt. Claimant testified that his level of pain on a scale from 1-10 without medication is a 4-5 and with medication is a 2-3. Claimant testified that he is right handed and that his hands and arms are fine and his legs give out on him from time to time. Claimant testified that the heaviest weight that he can carry is 10 pounds and that he does smoke and his doctor said to quit and his last cigarette was approximately one month before the hearing. Claimant testified that he could do light duty tasks and he needs a pacemaker and that his heart rate keeps dropping, but his medications help stabilize that.

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 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 clinical impression 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, the 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.

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 mental limitations resulting from his reportedly depressed state. 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 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 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 work which he has engaged in, in the past. Therefore, if claimant had not already been denied at Step 2, he would again be denied 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).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

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. Claimant did testify that he does receive 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, a younger individual (age 49), with a high school education and an unskilled work history who is limited to light work is not considered disabled.

It should be noted that claimant continued to smoke despite the fact that his doctor has told him to quit. Claimant was not in compliance with his treatment program until approximately one month before the hearing.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial gainful activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

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 Ismael Ahmed, Director
Department of Human Services

Date Signed: June 28, 2010

Date Mailed: June 29, 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.

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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

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