

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 2010-25636
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 20, 2010
Allegan 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 20, 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 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 September 30, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On January 28, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work.
- (3) On January 29, 2010, the department caseworker sent claimant notice that his application was denied.
- (4) On February 26, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (5) On March 19, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the evidence supports that claimant has a severe condition with significantly

impaired their ability to perform tasks. However, the evidence does not support the level of disability that would meet/equal a social security administration listing level criteria. 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 exertional work. Therefore, there are no psychiatric limitations. Therefore, based on the claimant's vocational profile of 45 years old, a high school equivalent education and a history of heavy skilled employment, Medicaid-P is denied using Vocational Rule 201.28 as a guide. Retroactive Medicaid-P was considered in this case and is also denied. State Disability 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, listings 1.02, 1.04, 11.14, and 12.09 were considered in this case.

- (6) The hearing was held on April 20, 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.
- (8) On April 23, 2010, the State Hearing Review Team again denied claimant's application stating that it had insufficient evidence and requested an internist examination.
- (9) The internist examination was conducted and returned to the department and sent to the State Hearing Review Team on June 28, 2010.
- (10) On July 6, 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 Medical Vocational Rule 202.17.
- (11) Claimant is a 45-year-old man whose birth date is [REDACTED]. Claimant is 5'10" tall and weighs 145 pounds. Claimant attended the 10 grade and does have a GED. Claimant is able to read and write and does have basic math skills.
- (12) Claimant last worked in 2004 or 2005 as a construction person building, framing and remodeling buildings. Claimant was a self-employed contractor and also worked as a welder and as a farmer. Since 2007 he has stayed with his mother and helped her change her diapers, feed her and help her dress. His mother weighs 80-90 pounds and she needs guidance because she has Alzheimer's.

- (13) Claimant alleges as disabling impairments: low back pain, low back surgery, pain in his leg, retrolisthesis at L4-L5.

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 not engaged in substantial gainful activity and has not worked since 2005. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant stated that he doesn't have a driver's license and his brother, sister or friend takes him where he needs to go. Claimant testified that he does cook one time per day and cooks things like meat and potatoes. Claimant testified that he does grocery shop 1 time per week and does need help getting around. Claimant testified that he cleans his home and does the dishes and laundry and does home health care services for his mother for about 5 hours a week. Claimant testified that he watches television 4-5 hours a day. Claimant testified that he has no mental impairments. Claimant testified that he can stand 15-20 minutes, sit for 5 minutes at a time and then he has to move around and that he can walk a block but not squat because his legs hurt. Claimant testified that he cannot bend at the waist but he can shower and dress himself slowly, barely tie and touch his toes. Claimant testified that his knees hurt. Claimant testified that he is right handed and his hands and arms are fine and his legs and feet hurt because of nerves pinching. Claimant testified that the heaviest weight he can carry is 10 pounds and he does smoke 8 cigarettes per day and his doctor has told him to quit and he is trying to quit but not in a smoking cessation program. Claimant testified that he does drink alcohol occasionally and stopped smoking marijuana in his 20's. Claimant testified that in a typical day he gets up, changes his mom, sits her at the table, feeds her, brushes her teeth, and brushes his teeth and then cleans up and does the dishes, and sits and watches television and does odds and ends around the house.

A June 4, 2010, physical examination indicates that the claimant was cooperative in answering questions and following commands. The claimant's immediate, recent and remote memory is intact with normal concentration. The claimant's insight and judgment are both appropriate. The claimant provides a good effort during the examination. His blood pressure was 140/80. Pulse 76 and regular. Respiratory rate was 16. Weight 136 pounds. Height 70" without shoes. The skin was normal. Eye and ears visual acuity of 20/20 in the right and 20/30 in the left eye without corrective lenses. Pupils were equal, round and reactive to light. The claimant could hear conversational speech without limitation or aids. The neck was supple without masses. Breath sounds were clear to auscultation and symmetrical. There is no accessory muscle use. There is a regular rate and rhythm without enlargement. There is a normal S1& S2. In the abdomen, there was no organomegaly or masses. Bowel sounds were normal. In the vascular system, there was no clubbing or cyanosis detected. There is no edema appreciated. The peripheral pulses are intact. In the musculoskeletal area, there is no evidence of laxity, crepitation or effusion. There is tenderness over the anterior joint space of both hips. Grip strength remains intact. Dexterity is unimpaired. The claimant could pick up a coin, button clothing, and open a door. The claimant had mild difficulty getting on and off the examination table, moderate difficulty heel and toe walking, moderate difficulty squatting and moderate difficulty standing on either leg. There is

lumbar spine straightening with tenderness over the facet joints at L4-S1. Range of motion studies show that claimant had a dorsolumbar spine range of 60, flexion 50 degrees, extension 10 degrees, right lateral flexion 15 degrees, and left lateral flexion 15 degrees or basically normal. Claimant was normal in all areas of the musculoskeletal area. In the neurologic area, cranial nerves were intact, motor strength and tone was normal. Sensory is intact to light touch and pinprick. Reflexes in the lower extremities are 2+ and symmetrical. Romberg testing was negative. The claimant walks with a guarded almost waddling gait without the use of an assistive device. The conclusion is back pain. He did have some tenderness over facet joints of L4-S1 and lumbar spine straightening. He also had tenderness over the anterior joint space of both hips. Whether this pathology is due to spinal stenosis or due to hips are both possibilities. His power was relatively stable. There were no active radicular symptoms today. He would benefit from the use of an assistive device for leg fatigue and balance control. His long term prognosis was guarded. He would most likely require further cervical intervention; left untreated he will continue to deteriorate. (pp1-5 of new information)

This Administrative Law Judge did consider all 124 pages of the old information as well as the new information contained in the file.

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. There are no laboratory or x-ray findings listed in the file. 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 no mental impairments.

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 a gain 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 her 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 45), 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 continues to smoke despite the fact that his doctor has told him to quit. Claimant is not in compliance with his treatment program.

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

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.

Landis

/s/

Y. Lain

Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: July 20, 2010

Date Mailed: July 21, 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/alc

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