

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: 2010-28900

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 12, 2010

St. Joseph 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 May 12, 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?

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 October 30, 2009, claimant filed an application for Medical Assistance and retro Medical Assistance benefits alleging disability.

(2) On February 3, 2010, the Medical Review Team denied claimant's application stating that claimant's impairments lacked duration.

(3) On February 17, 2010, the department caseworker sent claimant notice that his application was denied.

(4) On March 19, 2010, claimant filed a request for a hearing to contest the department's negative action.

(5) On April 9, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: In October 2009, the claimant had profound muscle weakness and loss of muscle mass. His weight was 156 pounds. He was admitted in November 2009 for excision of a pelvic mass and colonic resection. In December 2009, he was admitted due to a couple abscesses. In January 2010, his weight was 151 pounds. His weight was up to 187 pounds on February 23, 2010. The claimant's condition was improving. The medical evidence of record indicates that the claimant's condition has improved within 12 months from the date of onset or from the date of surgery. Therefore, MA-P is denied due to lack of duration under 20 CFR 416.909. The retroactive MA-P was considered in this case and is also denied.

(6) The hearing was held on May 12, 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 May 13, 2010.

(8) On May 18, 2010, the State Hearing Review Team again denied claimant's application stating that claimant's impairments lacked duration per 20 CFR 416.909.

(9) Claimant is a 52-year-old man whose birth date is [REDACTED] Claimant is 5'10 tall and weighs 165 pounds. Claimant lost 100 pounds in the last year. Claimant is a high school graduate. Claimant is able to read and write and does have basic math skills.

(10) Claimant last worked July 7, 2009 building homes and he was laid off because the business closed. Claimant has also worked as a spray painter.

(11) Claimant alleges as disabling impairments: Intestinal blockage, diverticulitis, a larger perforated colon and bowel obstruction, as well as depression, hearing loss in the right ear and loss of muscle mass.

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 July 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 unemployed. 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 him from working for a period of 12 months or more. Claimant did last work July 7, 2009. Claimant does receive unemployment compensation benefits in the amount of \$ [REDACTED] per week. Generally, an individual who receives unemployment compensation benefits must meet certain weekly requirements and requirements include being physically and mentally able to work, being available for and seeking work and filing his weekly claim for benefits on a timely basis. In the instant case, the claimant is disqualified from receiving disability based on the fact that he does hold himself out as ready and available to work and does receive unemployment compensation benefits.

The objective medical evidence on the record indicates that in October 2009, the claimant was 156 pounds. He was noted to weigh 265 pounds two years earlier. He had profound muscle weakness and loss of muscle mass. He had altered bowel movement with constipation with diarrhea and occasional abdominal discomfort. PAM pages 239 to 240. In November, 2009 the claimant was admitted for a laparotomy excision of pelvic mass, left colonic resection with primary anastomosis (page 248). The claimant was admitted in December 2009 due to an intraperitoneal abscess, secondary to possible fistula from the previous descending colon to rectal anastomosis. He had a separate abscess in the right inguinal area (pages 3 to 4). He underwent exploratory laparotomy, extensive adhesiolysis, drainage of the intrabdominal abscess, repair of multiple loops of jejunum and ileum and repair of an astomatic fistula loop transverse colostomy and drainage of the right inguinal abscess (page 5).

On January 5, 2010, the claimant's weight was 151.6 pounds (page 9). On January 19, 2010 his weight was 161 and he was healing well. On February 2, 2010, he weighed 174 pounds and 187 on February 23, 2010 (records from DDS).

On examination of February 2010, claimant had an abdominal scar from his previous surgery. His abdomen was globally tender. There was no distention noted. When he stood, there was a protrusion within the colostomy bag itself of reddish granulation tissue. It was reducible. He was noted to have depression which had improved. (Records from DDS.)

Claimant was admitted to the hospital on [REDACTED] On December 28, 2009, claimant was doing much better and he had no major complaints. His temperature was 98.7, his pulse rate was 93, and his respiration was 20. Blood pressure was 101/56 and O2 saturation was 98%. His mucous membranes were moist. Nares were patent. The chest was clear to auscultation. Heart sounds were regular. S1 and S2 are heard. Abdomen is soft, bowel sounds are present. Colostomy has got a lot of flatulence in the bag but no stool. Extremities were normal. Neurological was intact. The impression was status post closure of anastomatic fistula with dysfunction colostomy. He was started on clear liquids (page 290).

A March 18, 2010 letter from [REDACTED] indicates that claimant had two unexpected major surgeries for bowel resection and subsequent management for which he was unable to make any payments. He needed another bowel surgery for closure of his colostomy. The surgery is pending. (Page 274.)

On March 17, 2010 letter from [REDACTED] indicates that claimant did have chronic diverticular stricture in his colon which lead to a couple of surgical interventions and colon resection. He does currently have colostomy due to his chronic diverticulitis stricture and patient related that he does have significant protrusion of his bowel into the colostomy and that he is in urgent need for his colostomy to be reversed. He does have worsening depression as well. Currently, due to significant protrusion of his bowel into the colostomy bag, he pretty much has

to lie down in supine position and he is at risk for infection as well. The doctor indicated that claimant was in urgent need of some medical coverage to take care of the matter. (Page 273.)

Claimant testified on the record that he can stand for 25 minutes and he has no limitation upon his ability to sit. Claimant testified he can walk two blocks but cannot squat because it hurts his stomach. He can bend at the waist and shower and dress himself and he can tie his shoes if he is sitting, but he cannot touch his toes. His back is fine and he has rheumatoid arthritis in his knees. Claimant testified his level of pain on a scale from 1 to 10 without medication is a 6 and with medication as a 1; he takes Tylenol. Claimant testified that he does not use a cane or walker but he cannot pick up his granddaughter and he has lost at least 80% of his muscle mass. Claimant testified that the heaviest weight he can carry is ten pounds and that he is right handed, his hands and arms are fine, and his legs and feet are fine. Claimant testified that on a typical day, he gets up and drinks coffee, plays with his dog, eats dinner and takes a walk. Claimant was hospitalized on [REDACTED] for one week to reattach his colon and says that he goes to the doctor every two weeks.

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 sufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. However, claimant's impairments do not meet duration as he became ill in November 2009 and had several emergency surgeries and recently had his colon reattached. Then the clinical impression is that claimant is stable.

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 a 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 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 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), with a high school education and an unskilled work history who is limited to light work is not considered disabled.

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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/tg

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