

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 2010-29611

Issue No: 2009

[REDACTED]
Midland County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain for Jana Bachman

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, in-person hearing was held on May 11, 2010. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED].

This hearing was originally held by Administrative Law Judge [REDACTED]. Judge [REDACTED] is no longer affiliated with the Michigan Administrative Hearing System Administrative Hearings for the Department of Human Services and this hearing decision was completed by Administrative Law Judge [REDACTED] by considering the entire record.

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 Sept 11, 2009, claimant filed an application for Medical Assistance and Retroactive Medical Assistance benefits alleging disability.
- (2) On December 15, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.
- (3) On January 4, 2010, the department caseworker sent claimant notice that his application was denied.

- (4) On March 31, 2010, claimant's representative filed a request for a hearing to contest the department's negative action.
- (5) On April 15, 2010, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of medium work per 20 CFR 416.967(c) pursuant to Medical Vocational Rule 203.22.
- (6) The hearing was held on May 11, 2010. At the hearing, claimant waived the time periods and requested to submit additional medical information.
- (7) No additional medical information was submitted by April 25, 2011. Therefore, the record was closed April 25, 2011, and this Administrative Law Judge proceeded to make a decision based upon the entire record.
- (8) On the date of hearing, claimant was a 51-year-old man whose birth date was March 20, 1958. Claimant was 5' 10" tall and weighed 190 pounds. Claimant completed the 12th grade and was able to read and write and does have basic math skills.
- (10) Claimant last worked in March 2007, when he had worked in construction for 30 years.
- (11) Claimant alleges as disabling impairments: chest pain, back pain, Sciatica, coronary artery disease, stint placement and depression.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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 2007. Claimant is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence on the record indicates that claimant testified that he lives with family and he does have a driver's license and is able to drive. Claimant does cook and grocery shop and do all of his housekeeping duties, as well as his yard work but he does get more pain. Claimant testified that he fell in 1984 and he broke his foot bone, heels, crushed his disc and his knee has had pain since then and now he has been off work and may go for a 1 mile walk, ankle swell and get pain. Claimant testified that he has back pain and his legs go numb if he standing or leaning or if he sits for too long. Claimant testified that he's still looking for construction work but he can't function after chest spasms and usually he's weak and tired. Claimant testified that he can walk 1 mile, but his ankles swell, and he can stand for a few hours if he's moving around, and he can sit for 1 hour at a time, but his legs start to tingle and he has to stand and stretch. Claimant testified that he does not smoke, drink alcohol, or take any drugs besides medication and that he is very depressed. June 2, 2010, medical examination report indicates that the patient has a history of degenerative arthritis in his

back as well as bilateral crushed heel due to slip and fall injury off of a 3 story building when he landed on cement. He did undergo reconstructive surgery on both heels and has developed progressive degenerative arthritis in his back and ankles. He also has sustained vertebral fractures in his lower back and has not had any operative intervention. He now complains of pain that radiates down the left leg. He does not do any therapy now. He does not take anything for pain. He does not use an assist device. He was cooperative in answering questions and following commands. His immediate, recent and remote memory is intact with normal concentration. Patient's insight and judgment are both appropriate. The patient provides a good effort during the examination. Claimant's blood pressure on the left is 110/60, his pulse equals 70 and is regular, respiratory rate equals 16, and weight equals 192 pounds. Height equals 70" without shoes. His skin was normal. In the eyes and ears visual acuity equals 20/30 in the right eye and 20/25 in the left eye with corrective lenses. Pupils are equal round and reactive to light. The patient can hear conversational speech without limitation or aids. The neck is supple without masses. Breath sounds are clear to auscultation and symmetrical. There is no accessory muscle use. The heart there is regular rate and rhythm without enlargement. There is a normal S1 and S2. In the abdomen there is no organomegaly or masses. Bowel sounds were normal. In the vascular area there is not clubbing or cyanosis detected. There is no edema appreciated. The peripheral pulses are intact. In the musculoskeletal area there is no evidence of joint laxity, crepitation or effusion. Grip strength remains intact. Dexterity is unimpaired. The patient could pick up a coin, button clothing, and open a door. The patient had no difficulty getting on and off the examination table, mild difficulty heel and toe walking, mild difficulty squatting and mild difficulty hopping. There is lumbar spine straightening with diminished space height. Straight leg raising is negative. There is no paravertebral muscle spasm. Range of motion studies of the joints is as follows: some decreased extension right lateral flexion and left lateral flexion and the dorsal lumbar spine was still within normal ranges. All other ranges were normal (Page 66, 67). A May 26, 2010, examination indicates that claimant is a 52 year old man who came to the evaluation unaccompanied. Height and weight appeared to be average. He stated his height at 5' 10" and his weight at 189 pounds. Posture and gait were normal. There were no unusual facial expressions. Clothing and hygiene were appropriate. He did not have any difficulty in finding the location. He arrived at the appointment approximately 10 minutes early. He appeared to be in contact with reality, when asked how he felt about himself he replied "I'm not feeling great because I'm not working, but otherwise I'm feeling fine". There was no unusual motor activity or hyperactivity. He did not appear to have a tendency to exaggerate or minimize symptomatology. Insight and judgment appeared to be intact. Mental activity can best be described as spontaneous. Speech can best be described as clear. The claimant denied the presence of any auditory or visual hallucinations, delusions, persecutions, obsessions, or unusual powers. He did admit to feelings of worthlessness at time due to not being able to work. He denied ever having suicidal ideations. He did admit to physical pain. When asked to rate his pain on a scale from 1-10 with 1 being no pain and 10 being the worst pain, his pain is "always at a 2, but sometimes it is on 7 or higher". He reported that he has some difficulty sleeping, as he wakes up throughout the night. He goes to sleep at 10 and will wake up at 2:00AM and watch television for an hour, and then get back up at 6:00. He reported that he has

gained a little weight, but he is attempting to lose it. His emotional reaction must be described as normal. He did make consistent eye contact and interacted appropriately with the examiner. When asked to describe his mood, he replied, "I guess I feel down because of my health." When asked to rate his mood on a scale of 1 to 10 with 1 being the best he has ever felt and 10 being the worst he has ever felt, he replied a 6. He was oriented time 3. He was able to repeat 6 digits forward and 5 digits backward. He was able to recall 3 out of 3 objects after a three-minute interval. (Page 70). He named the president before our current president as [REDACTED]. He named other presidents during his lifetime as [REDACTED]. He states his birth date as [REDACTED]. He named the current president to the United States as Obama. He named five large cities as New York, Chicago, Los Angeles, Dallas, and New Orleans. He named current famous people as [REDACTED], and [REDACTED]. He named current news events as the oil spill, North and South Korea are at it and the Mexican border stuff. The claimant's performance of serial 7's was 100, 93, 86, 79, and 72. The claimant's performance of single digit addition and multiplication was $6+5 = 11$, $7+2 = 9$, $5 \times 4 = 20$, $9 \times 6 = 54$, and $28/7 = 4$. When asked how a bush and a tree are alike, he replied, "You always want something more." When asked what the saying means "Don't cry over spilled milk," he replied, "It's lost." When asked how a bush and tree are alike, he replied "They are both plants." When asked how they are different, he replied, "The size is different." When asked what he would do if he found a stamped, addressed envelope, he replied, "I would mail it." When asked what would you do if you discovered a fire in the theater, he said he would get help. His diagnosis was adjustment disorder with depressed mood. His axis GAF was 60, his prognosis was fair. If he received adequate physical treatment he would be able to manage his own benefit fund (Page 71, 72).

At Step 2, claimant has the burden of proof of establishing that she 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 the following disabling mental impairments: depression and anxiety

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 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 again at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

Claimant has submitted insufficient objective medical evidence that he lacks the residual functional capacity to perform some other less strenuous tasks than in his prior employment or that he is physically unable to do light or sedentary tasks if demanded of him. Claimant's activities of daily living do not appear to be very limited and he should be able to perform light or sedentary work even with his impairments. Claimant has failed to provide the necessary objective medical evidence to establish that he has a severe impairment or combination of impairments which prevent him from performing any level of work for a period of 12 months. The claimant's testimony as to his limitations indicates that he should be able to perform light or sedentary work.

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 person approaching advanced age at age 52, with a high school education and a history of unskilled/skilled work who is limited to light or medium work is not considered disabled pursuant to Medical Vocational Rule 203.22..

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 Retroactive Medical 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 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 Maura D. Corrigan, Director
Department of Human Services

Date Signed: 5/27/11

Date Mailed: 5/27/11

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/ds

