

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201032151

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

July 13, 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, an in-person hearing was held on July 13, 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 July 22, 2009, claimant filed an application for Medical Assistance and State Disability Assistance, and retroactive Medical Assistance benefits alleging disability.
- (2) On January 12, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work.
- (3) On January 23, 2010, the department caseworker sent claimant notice that his application was denied.
- (4) On April 22, 2010, claimant filed a request for a hearing to contest the department's negative action.

- (5) On May 3, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The claimant was admitted in April 2009 due an exacerbation of his asthma and upper airway obstruction secondary to pharyngeal tonsillitis. However, it also noted that he had not been taking his asthma medications for 2 weeks prior to the admission. He had another admission in June 2009 due an exacerbation of asthma. In September 2009 he did have scattered wheezes and shortness of breath with exertion. His FEV1 of 1.6 does not meet the listing level of 1.35 or less for his height. His FVC of 2.2 was also below the listing level of 1.55 or less for his height. 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 light work avoiding work around fumes and dust. Therefore, based on the claimant's vocational profile of a younger individual, 12th grade education, and a history of semi-skilled work, MA-P is denied using Vocational Rule 202.21 as guide. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days.
- (6) The hearing was held on July 13, 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 July 14, 2010.
- (8) On July 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 light work per 20 CFR 416.967(b) pursuant to Medical Vocational Rule 202.21 and commented that the additional objective information does not significantly affect the residual functional capacity. The prior State Hearing Review Team decision of May 2008 is upheld. The claimant retains the residual functional capacity to perform work at a light, exertional level. This may be consistent with 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 a Vocational Rule will be used.
- (9) Claimant is a 29-year-old man whose birth date is [REDACTED]. Claimant is 5' 9" tall and testified that he weighed 185-190 pounds but he appeared to weigh significantly more than that and his medical reports indicate that he weighs in the area of 243 pounds. Claimant is a high school graduate and does have a 1 ½ years of college where he studied secondary education. Claimant is able to read and write and does have basic math skills.

- (10) Claimant last worked in approximately 2007 for [REDACTED] as a salary manager overseeing supervisors and store operations. The claimant has also worked in a daycare center overseeing children.
- (11) Claimant alleges as disabling impairments: lifelong asthma, diabetes mellitus, sleep apnea, vision problems, and memory problems.

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

The objective medical evidence on the record indicates that claimant testified on the record that he lives with a friend in an apartment and his friend supports him. Claimant is married but separated and has no children under 18 and has no income or health insurance. Claimant testified that he does receive Food Assistance Program benefits. Claimant testified that he has never had a driver's license and his friend takes him where he needs to go. Claimant testified that he does microwave foods like ramen noodles and ravioli, and that his friend grocery shops for him and when he goes to the grocery store he rides in the amigo. Claimant testified that he does make his bed and put his clothes up but his friend does most of the housework. Claimant testified that he goes to church one time per week from noon to 1:30 p.m. and he watches television 3-4 hours per day. Claimant testified that he can stand 15-20 minutes at a time, sit for an hour to 2 hours at a time, and can walk about 50 feet and then has to stop and rest a lot and usually has about a 5-minute recovery time. Claimant testified that he cannot squat because it hurts his chest and that he can bend a little at the waist. Claimant testified that his knees and back are fine and that he is able to shower and dress himself very slowly and he uses a shower chair and that he is able to tie his shoes and touch his toes. Claimant testified that his level of pain on a scale from 1 to 10 without medication is a 9 and with medication is a 6. Claimant testified that he is right-handed and his hands and arms are fine and his legs and feet are fine. Claimant testified that the heaviest weight he can carry is 15-20 pounds and repetitively he can carry about a gallon of milk. Claimant testified that he doesn't smoke, drink alcohol, and has never done drugs. Claimant testified that in a typical day he takes his medications, cleans up and takes a shower. He gets his cereal, reads a book, watches television and sleeps most of the day and eats, watches television, and then goes to bed. Claimant testified that his meds don't work well. Claimant testified that he had surgery December 2009 for removal of his tonsils and uvula to help with his breathing and that he has two asthma attacks per month approximately.

A Medical Examination Report in the file dated June 15, 2009 indicates that claimant was normal in all areas of examination except that he had tonsillar hypertrophy and he had inspiratory problems as well as scattered expiratory wheezes. He was 68" tall and weighed 237 pounds. His blood pressure was 128/84. The clinical impression was that claimant's condition was deteriorating and the temporary disability was expected to last 6 months. He could occasionally carry 20 pounds or less but never carry 25 pounds or more and he could stand or walk less than 2 hours of an 8-hour day but could sit less than 6 hours in an 8-hour day. He could use both of 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 in the form of memory, sustained concentration, and had difficulty sleeping due to sleep apnea. This resulted in daytime sleepiness which would impair his cognitive functioning. He had difficulty breathing based upon his asthma and limited his ability to walk, stand, or carry heavy objects. (Pgs. 39-40)

A September 4, 2009 physical examination indicates that claimant was sitting comfortably in a chair and was in no obvious distress. He was making very loud upper airway sounds exhibiting a slightly elevated respiratory rate. He was able to arise from the chair to perform activities requested of him. Affect and dress were appropriate. Shortness of breath with exertion was observed. The claimant was cooperative in answering questions and following commands. His blood pressure on his left arm was 130/80. His pulse was 86, respiratory rate 18, weight 243 pounds, height 67.7" without shoes. His BMI was 37.2. His visual acuity in his right eye was 20/40 and left eye was 20/70 without corrective lenses. The claimant could hear conversational speech without limitation or aids. In his chest there was wheezes scattered throughout the lung fields with a prolonged expiratory phase exhibited. There was no cough. Breath sounds were not diminished. There was no accessory muscle use. Chest circumference was full, inspiration was 45". Chest circumference with full, expiratory was 44". The heart, there was regular rate and rhythm. There was normal S1 and S2. In the vascular system there was no clubbing or cyanosis. In the musculoskeletal area the claimant was right-handed. Full fist with full grip bilaterally was present with excellent pinch or grasp. In the neurological area the claimant walked with a normal gait without the use of an assistive device. Claimant took a pulmonary function test and was very short of breath throughout the test. The pulmonary function test suggested a positive response to bronchodilator administration. Significant shortness of breath with testing was observed. The claimant's true level of asthma was difficult to ascertain as only one documented hospitalization was noted that occurred in [REDACTED]. It was not clear what medications he has been taking on a regular basis. Reevaluation of the claimant's medical program is strongly supported as he described using an atrovent inhaler as his rescue inhaler. He was considered obese with a BMI of 37.2. Physical deconditioning and obesity may be contributing to his shortness of breath with exertion. (Pgs. 7-9)

A discharge summary dated [REDACTED] indicates that claimant came to the hospital for throat pain and an ENT consult was obtained and recommended antibiotics including ceftriaxone IV steroids. In terms of tonsillitis the results of the Mono spot test was negative. Rapid stress test was negative even though the claimant likely had clinical streptococcal pharyngitis with tender cervical as well as exudate of pharynx and tonsils. He has slowly improved and was experiencing very difficult swallowing which has gradually improved until the day of discharge. Claimant was in the hospital for 5 days from [REDACTED]. MGI was consulted in terms of possible EGD to rule out candida esophagitis after the claimant was not really responsive to steroids and IV antibiotics as well as oral antibiotics for 5 days. However, it was felt that EGD was not necessary. The claimant still experiences occasional wheezing but his breathing has become much improved. His chest x-ray did not reveal any infiltration as well as no

evidence of leukocytosis at the time of admission. (New Information, P. 1) Claimant's condition was stable. (P. 2)

A pulmonary function test conducted September 19, 2009 indicates that claimant's results were suggestive of moderate obstructive ventilatory defect. No bronchodilator challenge administered. The FEV1 is reported at 1.53, 41% of predicted. Volume curves appear to be reasonable and there was a 9 second effort on expiration. The flow volume loops shows markedly reduced inspiratory and expiratory flow rates raising the possibility of a large either fixed or a large possible fixed airway obstruction. Clinical correlation is required. (P. 6 of the New Information)

This Administrative Law Judge did consider the 160+ pages 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 the following disabling mental impairments: memory problems.

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 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 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 younger individual (age 29), with a high school education and an unskilled work history who is limited to light work is not considered disabled.

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: August 20, 2010

Date Mailed: August 23, 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/vc

cc:

