

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2010-34085

Issue No: 2009

[REDACTED] 0
Mecosta 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 [REDACTED]. Claimant personally appeared and testified. This hearing was originally held by Administrative Law Judge [REDACTED]. [REDACTED] is no longer affiliated with the Michigan Administrative Hearing System. This hearing 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 December 28, 1009, claimant filed an application for Medical Assistance and Retroactive Medical Assistance benefits alleging disability.
- (2) On April 14, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical Vocational Rule 203.25
- (3) On April 16, 2010, the department caseworker sent claimant notice that his application was denied.
- (4) On May 11, 2010, claimant filed a request for a hearing to contest the department's negative action.

- (5) On May 24, 2010, the State Hearing Review Team again denied claimant's application stating in it's denial that claimant is capable of performing work in the form of medium work per 20 CFR 416.967(c) and unskilled work per 20 CFR 416.968(a) pursuant to Medical Vocational Rule 203.28.
- (6) On the date of hearing, claimant was a [REDACTED] d man whose birth date is [REDACTED]. Claimant is [REDACTED] and weighs [REDACTED] pounds. Claimant completed the 12th grade and is able to read and write.
- (7) Claimant was currently working per [REDACTED] 40 hours per week earning \$9.40 per hour and he was a seasonal worker. Claimant has also worked at Meijer's as a Bagger and indicated that he intended not to work during winter time.
- (8) Claimant alleges as disabling impairments: symptoms of fatigue and pain, and poor concentration.

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 was engaged in substantial gainful activity and was working at the time of hearing. Claimant is disqualified from receiving disability at Step 1. However, this Administrative Law Judge will proceed through this sequential evaluation for the sake of argument.

The subjective and objective medical evidence on the record indicates that claimant testified on the record that he lives with his Mother and does have a driver's license and is able to drive. Claimant does cook grocery shops and does his housekeeping duties. Claimant testified that a typical day he gets up at [REDACTED], goes to work, works all day and when he comes home he just lays down and when he's not working he's always lying down. Claimant testified that he has fatigue, poor concentration and sleeplessness and it's been going on for approximately 11 months. Claimant testified that he can walk 2 blocks, stand for 30-60 minutes, sit for 3-4 hours and can carry 50-100 pounds. Claimant is right handed. He doesn't smoke, drink alcohol or do any drugs. A March 23, 2010, medical examination report indicates that the claimant was cooperative in answering questions and following commands. He was dressed in his button down shirt jeans and boots. He was in no acute distress. He did appear fatigued. His immediate, recent and remote memory was intact with normal concentration. The patient's insight and judgment were both appropriate. The patient provided a good effort during the examination. Vital sounds on left arm blood pressure were 120/88. The pulse was 84 and regular. Rate was 185 pounds. Height was 71" without shoes. The skin was normal. Visual acuity in the right eye was 20/20 and the left eye was 20/20 with corrective lenses. Pupils are round, equal and reactive to light. The patient can hear conversational speech without limitation or aids. The neck was supple without masses. In the chest, breath sounds are clear to auscultation and symmetrical. There is no accessory muscle use. In 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 are normal. In the vascular system no clubbing cyanosis or edema detected. The peripheral pulses are intact. There is no evidence of joint laxity, crepitation or effusion. Grip strength remains intact. Dexterity is unimpaired. The patient can pick up a coin, button clothing, and open a door. The patient had no difficulty getting on and off the examination table, no difficulty heel and toe walking, no difficulty squatting, and no difficulty hopping. Range of motion of the joint is full. In the neurological area cranial nerves are intact. Motor strength and tone are normal. Sensory is intact to light touch and pin prick. Reflexes are intact and symmetrical. Romberg testing is negative. The patient walks with a normal gait and without the use of assist device (Page 99). The conclusion was fibromyalgia (Page 98). A mental status examination performed April 7, 2010, indicates that he arrived for the appointment on time. He was dressed appropriately, but it appeared that he had not washed his hair for some time. He had a scraggly beard and he had long hair that reached his shoulder. He was wearing his park ranger clothing. He was wearing glasses which he said he needed for distance. He was 5' 11" tall and weighed 185 pounds. He looked severely depressed. His shoulders were slumped his head was hanging forward and he frequently looked down. He spoke quietly but other than that he had good receptive and expressive language skills. He had at least average intelligence if not above average. His thought processes were relevant and logical. His speech was not pressured. He denied any auditory or visual hallucinations. There was no evidence of paranoia process or thoughts of reference. No evidence of any kind of thought disorder or disassociate to state. There was no evidence of obsessive compulsive traits. He had never entertained suicidal thoughts and had never got anything self- agurious. He was oriented times 3. He was able to repeat 5 digits forward and 4 digits backward for immediate memory. In recent memory, when he was asked to remember 3 items chair, ice cream and book, after 3 minutes he was able to recall the ice cream and the chair, but not the book (Page 94). He named the President before our current President as George W. Bush. He named other President's in the past 50 years as Reagan, and Nixon. He correctly identified his date of birth. He named the current President of the United States as Barack Obama. He named 5 large cities as Chicago, Detroit, New York, and Las Vegas and Orlando. He named some famous people who are currently alive as Clint Eastwood, Sinjero, Miamoto, and Steven Culbert. When asked to describe something that happened recently in the news, he said "there was a coal mine explosion". When asked if he knew any details of it he said, "He did not know any details and did not know the state where it happened". When asked how many weeks are in a year he stated "52". When asked who was Martin Luther King, he said "the name is familiar but he did not know what position he was in if he had a position." When asked to subtract serial 7's from 100 up to 30 seconds, he said "93, 86, 79, 71, 66, 58, 51, 46". When asked to count by serial 3's he quickly responded "3, 6, 9, 12, 15, 18, 21, and 24." The following additional math problems $11 + 4 = 15$, $6 * 7 = 36$, $35 / 7 = 5$. When asked the meaning of sayings about the grass being greener on the other side of the fence he stated "things always look better from the other perspective". When asked the meaning of the saying about not crying over spilled milk, he said "don't cry over little things". When asked how a bush and a tree are alike he said, "They are both vegetation". When asked how they are different he said "the size". When asked how an orange and apple are alike he said "they are both fruit", and when asked how they were

different he said “the color”. When asked what he would do if he found an envelope in the street that is sealed, addressed and had a stamp on it he said, “I would leave it there”. When asked what you would do if you were the first person to discover fire in a movie theater, he said, “I would yell fire”. Claimant is capable of understanding carrying out instruction (Page 93). Claimant was diagnosed with major depressive disorder, panic disorder, agoraphobia, dependent personality disorder and a GAF of 55. His prognosis was fair and the doctor’s say that return to work is probably therapeutic but he needs therapy and he would be able to manage his own funds (Page 92).

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, panic disorder, and personality disorder.

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 younger individual (age 27), with a high school education and an unskilled work history who is limited to light work is not considered disabled.

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, and 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: 5/11/11

Date Mailed: 5/11/11

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.

[REDACTED]

[REDACTED]

[REDACTED]