

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: 2010-42688
Issue No: 2009
Case No: [REDACTED]
Hearing Date
August 19, 2010
Kalamazoo 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 August 19, 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 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 February 18, 2010, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.
- (2) On March 26, 2010, the Medical Review Team denied claimant's application stating that claimant's impairments lack duration.
- (3) On April 1, 2010, the department case worker sent claimant notice that his application was denied.
- (4) On June 30, 2010, claimant filed a request for a hearing to contest the department's negative action.

- (5) On July 20, 2010, the State Hearing Review Team again denied claimant's application and requested additional medical information in the form of a psychiatric evaluation and an internist evaluation.
- (6) The hearing was held on August 19, 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 November 24, 2010. The additional information was received after the record close date of October 1, 2010. This Administrative Law Judge sent the information as a courtesy to claimant.
- (8) On December 2, 2010, the State Hearing Review Team again denied claimant's application stating in its' medical summary analysis and decision: At the October 15, 2010, medical examination the heart was functioning within normal limits. Blood pressure was 138/80. peripheral pulses were present and equal. The lungs were clear to auscultation. There was no clubbing, cyanosis or edema. Upper extremity use was normal. Gait and mobility did not require ambulatory aides. Straight leg raise was negative bilaterally and all other major body systems were functioning normally. The examining physician opined that the claimant was out of condition. At the September 11, 2010, mental status evaluation the claimant was alert and oriented. He was able to take care of his basic needs. He can do simple tasks. The objective medical evidence presented does not establish a disability at the listing or equivalence level. In following the sequential evaluation process, the claimant does not engage in substantial gainful activity. The claimant's impairments do not meet/equal the intent of a Social Security listing. The claimant retains the capacity to perform unskilled work of at least medium exertional level. Therefore, MA-P is denied per Vocational Rule 203.15. Retro MA-P was reviewed and denied. 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 work, a denial to other work, based on a Vocational Rule will be used.
- (9) Claimant is a 54-year-old man whose birth date is [REDACTED]. Claimant is 6' tall and weighs 270 pounds. Claimant recently gained 30 pounds. Claimant is a high school graduate. Claimant is able to read and write and does have basic math skills.
- (10) Claimant last worked July 3, 2008, as a truck mechanic where he worked for 29 ½ years before the doors closed on the business.
- (11) Claimant alleges as disabling impairments, back injury, hernia, hypertension, depression, asthma, fibromyalgia, acid reflux, and lower back pain L4-5.

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 2008. Claimant is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence on the record indicates claimant testified that he lives with his wife in an apartment and he is married with no children under 18 and no income. Claimant testified that he receives Food Assistance Program benefits and he does have driver's license and he drives two times per month to the bank or to the post office. Claimant testified that he does cook 1-2 times per week and cooks things like canned soup or microwaveable dishes and sandwiches. Claimant testified that he does grocery shop 2 times per month and he usually needs help with picking up heavy things. Claimant testified that he does dishes, folds clothes, and vacuums. Claimant testified that for a hobby he reads books and he watches TV 3-4 hours per day. Claimant testified that he can stand for 45 minutes to an hour at a time and can sit for 45 minutes to an hour at a time. Claimant testified that he can walk 20-30 yards but cannot squat, tie his shoes or touch his toes. Claimant testified that he can bend at the waist but not well and he is able to shower and dress himself. Claimant testified that his level of pain on a scale from 1-10 without medication is an 8-9 and with medication is a 7-8. Claimant testified that he is right handed and his hands and arms are fine and he does have some pain in his legs and feet and right buttocks. Claimant testified that the heaviest weight that he can carry is 5 pounds and he does not smoke or take drugs and he usually drinks a glass of wine occasionally. Claimant testified that his feet turn purple and in a typical day he gets up and takes his medication and then he turns on the TV and takes the dog for a walk and then goes back to bed. He then gets up, eats, has coffee, watches the news, does the dishes, sits down, washes up, brushes his teeth and then dresses. He then takes his medication and eats at 4:00p.m., then lies down for 3 hours, watches TV, then takes his medication and goes to bed. Claimant testified that he was in the hospital November 11, 2009, for 15 hours due to chest pain. Claimant testified that he is not able to engage in sexual relations and he goes to the doctor every 3-4 months.

This Administrative Law Judge did consider the entire medical packet of 106 pages plus the additional medical information which was submitted effective November 24, 2010, in making this decision.

An October 15, 2010, medical examination report indicates that the claimant was cooperative in answering questions and following commands. He had a mildly depressed affect and was in a knit shirt, jeans, and slip on shoes. He otherwise appeared appropriate. The claimant's immediate, recent and remote memory was intact with normal concentration. The claimant's insight and judgment were both appropriate. The claimant provided a good effort during the examination. His vital signs were: blood pressure in the left arm 138/80, pulse was 78 and regular, respiratory rate was 16, weight was 254 pounds and his height was 71" without shoes. His skin was normal. His visual acuity in the right eye was 20/20 and the left eye was 20/20 without corrective lenses. The pupils were equal, round and reactive to light. The claimant could hear conversational speech without limitation or aides. The neck was supple without masses. The chest breath sounds were clear to auscultation and symmetrical. There is no accessory muscle use. The heart had a regular rate and rhythm without enlargement. There is a normal S1 and S2. The abdomen had no organomegaly or masses. Bowel sounds were normal. In the vascular area there was no clubbing,

cyanosis, or edema detected. The peripheral pulses were intact. In the musculoskeletal area there was no evidence of joint laxity, crepitation, or effusion. Grip strength remained intact. Dexterity is unimpaired. The claimant could button clothing and open a door. The claimant had no difficulty getting on and off the examination table, no difficulty toe walking, mild difficulty squatting and no difficulty standing on either foot. There was some lumbar spine straightening with tenderness over the facet joints, predominantly at L4-S1. Straight leg raising was negative. There was no paravertebral muscle spasm noted. Range of motion of the joints appeared full. In the neurologic area: cranial nerves were intact. Motor strength and tone were normal. Sensory was intact to light touch and pinprick. Reflexes were intact and symmetrical. Romberg testing is negative. The claimant walks with a guarded gait without the use of an assist device. The conclusion is that claimant has been relatively compliant but increased activity would be helpful as he is mostly sedentary. There were no findings of cardiovascular disease to date and/or damage. Again an element of deconditioning does appear to be present (pp. P1-P4).

The September 11, 2010, psychological report indicates that claimant stated that he reinjured his back in June 2008. The injury took place at home when he was trying to pull a boat out. He indicated that the injuries are in the lumbar area. He also stated that he has fibromyalgia. He stated sometimes he can go a couple months without problems. Pain tends to develop diffusely. He describes various aches and pains. He also states that he has a bone spur in his left foot, in the heel area. He has had asthma for the last 20-30 years. He indicated that he has quite a bit of stress and he feels depressed. He has limited resources for treatment. He was taking antidepressants but stopped in February. Claimant was cooperative during the evaluation, he was not overtly hostile, disagreeable or overtly suspicious. He was wearing glasses and his hearing appeared adequate for conversational purposes. He was wearing clean clothes and had good hygiene and grooming. His eye contact was good. He used no assistive device and he was 5'10" tall and weighed approximately 270 pounds. He was right hand dominant. He was alert and responsive. He followed the conversation. He tended to stay on topic. He was logical. There was no halting or blocking observed and he did not appear to be overtly confused. Reasoning skills appeared to be adequate. Thought content was remarkable for health concerns, adjusted to his limitations, financial stress and family stress. He appeared to be depressed. There was no evidence of psychosis. He did seem depressed today. He did some smiling which was appropriate but otherwise his affect seemed somewhat lackluster. He arrived on time, knew his name and recognized the nature of the appointment. He counted backward from 65-49 with 2 errors, which he did not recognize. He was able to spell world forward and backward correctly. He also named Obama and Bush as recent presidents. He gave the following knowledge responses: seconds in a minute is 60, weeks in a year is 12. Large cities were New Orleans and Los Angeles. Famous people were Arnold Schwarzenegger and current events were the oil spill in the river. He was asked to do the following simple math: $4+6=10$, $8-5=3$, $2*8=16$, and $9/3=3$. He was asked to respond to the following abstract saying: the grass is greener on the other side, by saying something is always better; and don't cry over spilled milk, he said don't worry about it. To assess verbal concepts, he was asked how the following words were

similar; piano and a drum were instruments, horse and a tiger are mammals, and a boat and a automobile were vehicles that you drive. When asked what he should do if he found a stamped addressed envelope in the street, he said he would put it in the mailbox, and what he would do if he were the first person to see a fire in a theatre, he said call 911. He was diagnosed with alcohol dependence in long term remission, chronic pain and fibromyalgia, unemployment and financial and family stress and lack of resources. He had an axis GAF 54. His prognosis was guarded. He appeared to be able to follow simple instructions. Pain appeared to be his dominant complaint, with depression as a significant secondary complaint. Medical records will be important to review to help determine if there are further difficulties that would interfere with his ability to stay in full time work, should he be awarded benefits, he would likely be able to manage them independently (p. P5-9).

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: 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 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 who is closely approaching advanced age, with a more than high school education and an unskilled work history who is limited to medium work is not considered disabled pursuant to Medical Vocational Rule 203.15. Claimant is also not considered disabled if he was limited to light work.

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 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.

Landis

/s/

Y. Lain

Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: February 25, 2011

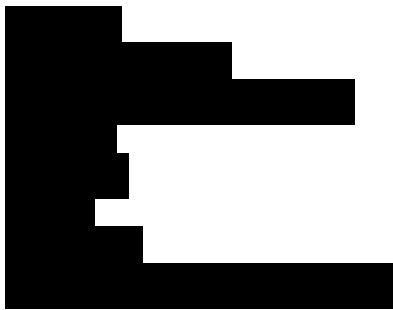
Date Mailed: February 25, 2011

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

LYL/alc

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