

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

IN THE MATTER OF:



Reg. No: 2010-45798
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 7, 2010
St. Clair 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 September 7, 2010. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and retroactive Medical Assistance (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 August 28, 2009, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.
- (2) On June 1, 2010, the Medical Review Team denied claimant's application stating that claimant could perform prior work.
- (3) On June 29, 2010, the department case worker sent claimant notice that his application was denied.
- (4) On July 12, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (5) On August 10, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the conflicting treating source notes are summarized best by giving greater

slate to those found on pages 64 and 65. The note from page 135 is not supported by the remainder of the evidence. The claimant has a history of coronary artery disease and other conditions. All of which are currently stable with treatment. The claimant retains the physical residual functional capacity to perform light exertional work. The claimant's past work was light and unskilled in nature. Therefore, the claimant retains the capacity to perform their past relevant work. Medicaid-P is denied per 20 CFR 416.920 (e). Retroactive MA-P was considered in this case and is also denied. SDA was not applied for by the claimant. Listings 4.04, 4.12, and 9.08 were considered in this determination (p. 142).

- (6) The hearing was held on September 7, 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 September 13, 2010.
- (8) On September 15, 2010, the State Hearing Review Team again denied claimant's application stating in its' analysis and recommendation: the claimant had coronary artery bypass grafting x3 in 2007. The claimant's most recent examinations have not shown significant abnormal findings of his extremities. His lungs had been clear and his diabetes was well controlled and his blood pressure was better controlled in February 2010, after his medications were adjusted. There were no neurological deficits noted. The claimant's treating physician has given less than sedentary work restrictions based on the claimant's physical impairments. However, this medical source opinion is inconsistent with the great weight of the objective medical evidence and per 20 CFR 416.927(c) (2)(3)(4) and 20 CFR 416.927(d)(3)(4)(5), will not given controlling weight. The collective objective medical evidence shows that the claimant is capable of performing light work. The claimant retains the physical residual functional capacity to perform light work. The claimant's past work was described as light work by the claimant. Therefore, the claimant retains the capacity to perform his past relevant work. MA-P is denied per 20 CFR 416.920(e). Retroactive MA-P was considered in this case and is also denied.
- (9) Claimant is a 58-year-old man whose birth date is [REDACTED] Claimant is 5'10.5" tall and weighs 220 pounds. Claimant attended the 8 grade and has no GED. Claimant is able to read and write and does have basic math skills.
- (10) Claimant last worked in 2008 as a labor factory worker. Claimant has also worked for a staffing service and in a die shop for 16 years.

- (11) Claimant alleges as disabling impairments: coronary artery disease, hypertension, high cholesterol, arterial sclerosis, peripheral vascular disease, chronic obstructive pulmonary disease (COPD), open heart surgery in 2007, osteoarthritis, diabetes mellitus, and depression.

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 objective medical evidence on the record indicates that claimant testified that he is married and lives with his wife in an apartment in a senior citizen complex. Claimant has no children under 18 and no income and he receives Food Assistance Program benefits. Claimant does not have a driver's license and drives 3 times per week to the store. Claimant does make soup and sandwiches 4-5 times per week and does grocery shop a little bit to buy bread and milk. Claimant testified that he does dishes and vacuums and watches TV 6-7 hours per day. Claimant testified that he can stand for 20 minutes, sit for 2 hours then he goes and lies down. Claimant testified that he can walk less than a block and is able to squat and bend at the waist but he cannot tie his shoes or touch his toes. Claimant testified that he is able to shower and dress himself and his back is fine and he has arthritis in his knees. Claimant testified that his level of pain on a scale from 1-10 without medication is a 4 and with medication is a 3 and he is right handed and he has carpal tunnel syndrome in his hands and arms. He has vascular problems in his legs and feet and his toes are black because of circulation problems. Claimant testified that in a typical day he drinks coffee, takes his pills, showers, and does what he can and then he naps, eats, munch and then he takes his pill.

On page 65 of the medical reports, it indicates that claimant has a known case of ischemic heart disease status post aortic coronary bypass surgery. He had been doing well since his last visit. He denied any chest pains. On stress test he walked for about 7 minutes, achieving about 77% of predicted heart rate. He did not experience any chest pain. The claimant was clinically stable and he was advised to go back to work with the limitation of 8 hours per day. He was also advised not to lift heavy weights and stay on his current medications. The medical examination progress report was dated October 11, 2007.

A medical examination report dated July 29, 2008, indicated that claimant weighed 214 pounds and his blood pressure was 140/80. He had shortness of breath due to coronary artery disease and he had coronary artery disease and peripheral vascular disease, left leg edema, and shortness of breath but was normal in all areas of examination except he did have depression. The clinical impression is that claimant was stable and he could stand or walk less than 2 hours in an 8 hour work day and he could never lift any weight. He did not require assistive devices for ambulation, but he could use both upper extremities for simple grasping, reaching, pushing and pulling and fine manipulating, and could operate foot and leg controls with both feet and legs. Claimant had no mental limitations (pp. 134-135).

An internal medicine progress report dated January 15, 2010, indicated that on physical examination, claimant's blood pressure was 150/90. Heart rate was 68. Respirations was 14, weight was 220.4 pounds. Pulse oximetry is 99% on room air. There were no acute abnormalities in the HEENT. Neck was supple with no jugular venous distention. No goiter, no adenopathy and no carotid bruit. The chest had no crackles or wheezing. The cardiac revealed regular heart sounds. Normal S1 and S2. No gallops or

murmurs. The abdomen was soft and non-tender with no hepato or splenomegally with normal bowel sounds. The extremities revealed no extremity edema. No cyanosis or clubbing. Neurologic area revealed no gross deficit. The skin revealed no rashes or ecchymosis. The assessment and plan was diabetes mellitus, well controlled on current medication, hypertension not well controlled, depression, which they would add a medication, tobacco abuse, where he was counseled at length and given a prescription for Nicoderm patches.

Notes from February 2010, showed claimant's blood pressure was 150/70. His chest was clear and heart had regular rate and rhythm with no gallop or murmur. Neurological findings were normal. The extremities had no edema or tenderness (records from DDS).

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.

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.

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: November 8, 2010

Date Mailed: November 9, 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/alc

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