

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: 2010-46968
Issue No: 2009; 4031
Case No: [REDACTED]
Hearing Date:
January 4, 2011
Livingston 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 January 4, 2011. 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 April 8, 2010, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.
- (2) On May 11, 2010, the Medical Review Team approved claimant for State Disability Assistance benefits from April through July 2010 and denied claimant's Medical Assistance and retroactive Medical Assistance benefits stating that claimant's impairments lack duration.
- (3) On June 7, 2010, the department caseworker sent claimant notice that his application was denied.
- (4) On July 30, 2010, claimant filed a request for a hearing to contest the department's negative action.

- (5) On September 13, 2010, the State Hearing Review Team again denied claimant's application stating that it had insufficient evidence and requesting treating source notes and test results from April 2010 and a complete physical examination by a licensed physician.
- (6) The hearing was held on January 4, 2011. 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 January 5, 2011.
- (8) On January 20, 2011, the State Hearing Review Team again denied claimant's application stating in its analysis and recommended decision: the objective medical evidence present does not establish a disability at the listing or equivalence level. The collective medical evidence shows that the claimant is capable of performing past work as an insurance agent. 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 a wide range of light work. Therefore, based on the claimant's vocational profile of a younger individual, 16 years of education and light work history; MA-P is denied using Vocational Rule 202.22 as a guide. Retroactive MA-P was considered in this case and is also denied.
- (9) Claimant is a 47-year-old man whose birth date is [REDACTED]. Claimant is 5'9" tall and weighs 255 pounds. Claimant has a [REDACTED]. [REDACTED] Claimant is able to read and write and does have basic math skills.
- (10) Claimant last worked August 2009 for [REDACTED] selling insurance. Claimant has been in insurance sales approximately years and he also worked as a manager for enterprise and in restaurant jobs.
- (11) Claimant alleges as disabling impairments: cervical myopathy, shaking over the entire body, numbness from the neck down, through the shoulders into the fingers, a neck tumor, C1-C2 surgery and decompression, a pinched nerve, anemia, hemorrhoid surgery 3-4 months ago.

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 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 August 2009. Claimant is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence on the record indicates that claimant testified that he lives with his wife in a house and he is married with no children who live with him. Claimant does receive State Disability Assistance benefits in the amount of \$ [REDACTED] per month and is also receiving Food Assistance Program benefits. Claimant does have a driver's license but usually catches the city bus. Claimant testified that his wife cooks for him. Claimant testified that he grocery shops 1 time per week for minor things and he needs help with transportation and picking up heavy things. Claimant testified that his wife cleans the home and he doesn't do any outside work and he has no hobbies. He watches TV 2-3 hours per day and he reads 3 hours per day. Claimant testified that he can stand for 10-15 minutes and can sit for 30 minutes and he can walk a ¼ to a ½ a mile and squat with pain. Claimant testified that he cannot bend at the waist and his back hurts some times and his knees are fine but they hurt. Claimant testified that he can shower and dress himself but not tie his shoes and touching his toes is hard. 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 has a hard time buttoning his shirts and he usually sits in the shower. Claimant stated that he is right handed and that he has pain and numbness in his hands and arms and numbness in his left thigh and lower right leg. Claimant testified that the heaviest weight that he can carry is 10-15 pounds. Claimant testified that he doesn't smoke drink or do drugs. Claimant stated that in a typical day he gets up, eats breakfast, watches the news on TV, makes a few phone calls, reads and walks in the garage, eats and then goes to bed. Claimant testified that he had neck surgery April 15, 2010, and he was in the hospital for 10 days and in November 2010 he had hemorrhoid surgery. Claimant testified that he could do work on a computer for about 15 minutes.

The claimant underwent posterior cervical decompression and fusion from the C1-C3 level in [REDACTED] (pp. 57-58). The cervical spine x-ray in [REDACTED] showed good position of instrumentation and stable alignment (p. 57). The physical examination in [REDACTED] reports that claimant height is 5'7" and weighs 256 pounds. His blood pressure was slightly elevated with no end organ damage. The range of motion of the cervical spine was mildly decreased with full range of motion of the upper extremities. There was intact sensory. He had slight weakness of his motor strength and gait (pp. 63-64).

A medical examination report dated [REDACTED] indicates that claimant was 5'8" tall and weighed 260 pounds. His blood pressure was 140/80, he was right hand dominant and his visual acuity was 20/25 best corrected in both eyes. The clinical impression is that he was improving and he could meet his needs in the home.

A [REDACTED] medical exam report indicated that claimant appeared to be doing better. He continued to describe right sided neck discomfort and he recently had an episode of waking up with pain extending up to the occipital region. On exam his incision was well healed. Motor strength with encouragement was grossly normal in his upper extremities except through his hand grip strength which is 4/5 bilaterally. His deltoid strength is 4+/5 bilaterally. He had stable but slow slightly wide based gait. Review of his x-rays would demonstrate his instrumentation which appears to be in good position. His alignment is stable. These x-rays were performed on [REDACTED] at an outside institution. It was recommended that he continue his therapy. Clinically he was improved (p. 57).

[REDACTED] medical exam report indicates that examination of the posterior surgical wound reveals it to be healing well without erythema, edema or drainage. There is no pain to palpation on the area. DTR's are 1/2 to upper extremities bilaterally. Muscle strength is 5-/5 to his upper extremities but it's very difficult to assess the patient because he states that it is painful for him to move his arms, therefore, it is hard to interpret as to what his true strength is. He does not appear to have any triceps weakness as he did pre-operatively. He does have right greater than left lower extremity swelling with 1+ pitting edema on the right and diffused non-pitting edema on the left. He has no discoloration to his legs and very minimal discomfort when squeezing his calves. No increased pain with dorso flexion of his foot. AP lateral view of cervical spine taken on [REDACTED] were reviewed which shows proper placement of instrumentation without halo effect around the screws. Good sagittal alignment is maintained (pp. 58-59).

An [REDACTED] medical examination report indicates that claimant was seen for hypertension, erectile dysfunction and constipation. It was determined that his hypertension was benign and controlled. HEENT: was negative for eye discharge and vision loss. He was negative for ear drainage, hearing loss, nasal congestion, nasal drainage, rhinorrhea, tinnitus, tooth pain and vertigo. The respiratory was negative for asthma, coughs, dyspnea and wheezing. Cardiovascular: negative for chest pain, claudication, edema and irregular heart beat/palpitation. Gastrointestinal: positive for blood in stool, this occurs occasionally about 2 times per week. The volume is small is described as bright red. He had some constipation and rectal bleeding. He was negative for hemorrhoids, melena and diarrhea. His height was 5'7" tall and weighed 256 pounds and his blood pressure was 130/60 and his temperature was 97.5, pulse 80, BMI 40.09. His head and face were normocephalic, his eyes had no exophthalmos, papillary reaction is normal and EOM intact. Hearing was grossly intact. Tympanic membranes were normal. There was no nasal deformity. Mucous membranes were normal. Tongue and throat appeared normal. No mucosal lesions. The neck and thyroid was supple without adenopathy or enlarged thyroid. Lymphatic system: no palpable cervical or supraclavicular adenopathy. Respiratory was normal to inspection. Lungs were clear to auscultation. Cardiovascular of regular rhythm. Normal S1 and S2 without S3, S4 and murmur. Vascular was well perfused. Carotid and pedal pulses are normal. No bruits. The abdomen was soft, non-tender without organomegaly or masses. Genital urinary: no CVA tenderness. Normal external genitalia. The rectum

anus appears normal. No masses. No impressive skin lesions present. Back is fine inspection reveals muscle spasms. Longitudinal scar over cervical vertebrae. Thoracic spine of scoliosis mildly reduced range of motion. The extremities had no joint deformity, heat, swelling, erythema or effusion. Full range of motion. The neurological area was normal. He was alert and oriented x3. Grossly normal intellect. The memory was intact. Cranial nerves II-XII intact. Sensory intact. Motor weakness, balance and gait weakness. Deltoid has 4/5 strength bilaterally. Normal size, normal biceps, and brachialis 4/5 bilaterally increased size normal. Triceps 4/5 bilaterally increased size normal. Interossei 5/5 strength bilaterally normal size normal. Iliopsoas 4/5 strength in the left side normal size. Quadriceps 4/5 strength bilaterally increased size, hamstrings 4/5 bilaterally increased size. Gastrocnemius/soleus 4/5 bilaterally increased size. Deep tendon reflexes were symmetrically decreased. In the psychiatric area, there was no unusual anxiety and or evidence of depression (pp. 61-64).

A second medical examination report dated [REDACTED] indicates that claimant was on temporary disability which was expected to last 6-12 weeks after surgery. He could frequently lift less than 10 pounds and never lift 10 pounds or more and he could use his upper extremities for simple grasping, reaching and fine manipulating but not excessive pushing and pulling and he had a 5-10 pound weight restriction and he could push and pull on all the doors (p. 4).

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 improving/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 younger individual (age 47), with a college 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.

