

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2010-49573
Issue No: 2009; 4031
Case No: [REDACTED]
Hearing Date:
September 22, 2010
Newaygo 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 22, 2010. Claimant personally appeared and testified.

This hearing was originally held by Administrative Law Judge Jana Bachman. Judge Bachman is no longer affiliated with the Michigan Administrative Hearing System Administrative Hearings for the Department of Human Services and this hearing decision was completed by Administrative Law Judge Landis Y. Lain by considering the entire record.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P), retroactive Medical Assistance (retro 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 May 21, 2010, claimant filed an application for Medical Assistance, State Disability Assistance, and retroactive Medical Assistance benefits alleging disability.
- (2) On July 28, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical Vocational Rule 202.13 and avoid frequent bilateral fingering.

- (3) On July 30, 2010, the department caseworker sent claimant notice that his application was denied.
- (4) On August 9, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (5) On August 26, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: there is no evidence to support that the claimant has a severely impairing psychiatric condition. The treating source's opinion cannot be given controlling weight as the findings are inconsistent with the preponderance of the evidence. The opinion offered during the examination, page 9, that the claimant is incapable of performing past work is supported by the evidence. Accordingly, it is appropriate that the claimant would reasonably be limited to performing light exertional work. 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 exertional work; there is no evidence supporting any psychiatric limitations. Therefore, based on claimant's vocational profile of 53 years old, at least a high school education and a history of sedentary, skilled employment, MA-P is denied using Vocational Rule 202.14 as a guide. Retroactive MA-P was considered in this case and is also denied. State Disability Assistance is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above-stated level for 90 days. Listing 1.02, 1.03, 1.04, 4.04, 11.01, 11.14, 12.04, and 12.09 were considered in this determination.
- (6) Claimant is a 53-year-old man whose birth date is June 2, 1957. Claimant is 5'8" tall and weighs 195 pounds. Claimant is a high school graduate and also is certified in gemology and stone setting. Claimant is able to read and write and does have basic math skills. Claimant does have some hand shaking; therefore, it is difficult to write.
- (7) Claimant last worked in 2005 as a jeweler which he did for 28 years.
- (8) Claimant alleges as disabling impairments: migraine headaches, carpal tunnel syndrome bilaterally and other injuries to the hand, right shoulder pain, depression, heart surgery and left knee replacement.

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 2005. 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 girlfriend and he supports himself by having sold all of his possessions. Claimant does have a driver's license and is able to drive but not when he is taking his medication. Claimant testified that he does cook some, but drops things and he does grocery shopping, but he cannot carry the groceries. Claimant testified that his hands are impaired so he cannot do many housekeeping duties and that he does get up at 6:45 a.m., and puts his child on the bus and he goes for a walk, and goes home and lays down until school is out and he cares for the child. Claimant stated that he can walk two miles, sit for 20 minutes and stand for 20 minutes, but his back and hips and knees hurt and that he had knee replacement, and the heaviest weight he can carry is less than ten pounds. Claimant testified he does smoke, but does not drink alcohol or take drugs.

A medical report contained in the file from July 20, 2009 indicates that claimant was 5'9" tall and weighed 196 pounds. His pulse was 55. His blood pressure was 147/92. Corrected vision was 20/25 OD and 20/35 OS. Corrected near vision 20/20 OS. His head was normocephalic. Eyes peril, eomi and red reflects his present. His ears were unremarkable. The throat was clear. The neck had no thyromegaly. Lungs were clear throughout with rales, rhonchi, or wheezing. The heart rhythm was regular with no murmur or gallop. The abdomen is soft and benign and nontender with no organomegaly or mass. Extremities were symmetric. The hands are negative for atrophy, swelling or deformity. He does lack some motion of the right middle finger. There he has difficulty extending. Palpation in the palm suggests a Dupuytre's contracture of that digit. The other fingers are less affected. Nonetheless, he has to make extra effort to quickly oppose the thumb tip to the finger tips of all digits, especially the middle finger. The left is unremarkable. Phalen's and tinel's are negative bilaterally and sensory and motor are full. The grips are notably asymmetric. The spine is straight without deformity. The left knee is quite tender laterally and medially, but there is no swelling. Patellar motion is only mildly uncomfortable. Sensory is full in the feet. The gait is normal except the slight hitch or antalgia favoring the left knee. Despite the knee, he squats to a knee flexion of 100 degrees and recovers. The patient is alert and oriented x3. He did not exhibit sad or anxious behaviors. He maintained good eye contact and had no lateralizing neurologic findings. The impression was diabetes properly controlled, hypertension properly controlled and improved with weight loss, coronary artery disease and bilateral carpal tunnel syndrome history and trigger fingers. (Page 172.)

A psychiatric medical report dated July 13, 2009, indicates that claimant was in contact with reality. He was cooperative and generally pleasant and talkative. He was alert, oriented and spontaneous. His speech was clear, coherent, and fluent. His thought

processes were relevant, logical and connected. He denied blackouts, delusions, hallucinations, paranoia, persecutory ideations or obsessions. He complained of being hopeless and worthless but denied any thoughts of suicide, any suicide attempts or any homicidal thoughts. He does have mild sleep disturbance. He was fully oriented to time, person and place (Page 175). He was able to recite six numbers forward and four numbers in reverse. He did recite the three objects named for him and could recall two of them three minutes later. He correctly identified the current president but could not give the names of any other presidents because he hated politics. He gave his birth date as June 2, 1957. He stated five large cities were [REDACTED], [REDACTED], and current famous person was [REDACTED]. He was unable to give any current events. He was unable to subtract 7s from 100, but he was able to subtract 3s from 20. He correctly multiplied 3x4 but gave a response of 48 to 7 x 8. When asked to explain the grass is greener proverb, he said I don't worry about little things like that. When asked how a bush and a tree are alike, he said the bush is small and the tree is big, and when asked how they were different, he said the bush grows long and short and the tree is big and tall. When asked what he would do if he found a stamped addressed envelope, he said he would probably drop it in the mailbox, and when asked what he would do if he discovered a fire, he said he would hit the fire alarm. When asked about his future plans, he said move north into the country and out of the city. He was diagnosed with depressive disorder and a global assessment of functioning scale of 55. His prognosis was guarded and he would benefit from vocational rehabilitation program to have him explore work activities that do not involve the use of the upper extremities, and he would be able to manage his own benefit funds. (Pages 176 and 177.)

On July 2, 2010, the medical report indicates that claimant was stable in all areas, his hands were free of atrophy, swelling, or deformity. Fine and gross dexterity were intact. He is somewhat tender in the right palm where he has a scar at the third and fourth MP joint area consistent with trigger finger release surgery. At rest, his right middle finger does tend to remain slightly more extended than the other fingers at the level of the MP joint. However, the ranges of motion are essentially normal. Tinel's on the right resulted in withdraw behavior with pain at the wrist. The left hand was unremarkable. Phalen's was negative bilaterally. The right ulnar nerve of the elbow was not irritable. The left ulnar nerve was transposed and not irritable. The spine was straight without deformity and the lower extremities are unremarkable except for a surgical scar from left knee and difficulty with a tandem gait. He did have some crepitation of the knees, left greater than right, but no gross ligamentous laxity. Sensory appeared intact except slight loss on the left foot. The patient was alert and oriented x3 and maintained good eye contact. He exhibited no sad or anxious behaviors and the impression was carpal tunnel syndrome, heart history, headaches, hypertension, cholesterol and diabetes. (Page 14.)

On July 15, 2010, a psychological evaluation indicates that his diagnosis was generalized anxiety disorder, depressive disorder and Axis GAF of 53, and a guarded prognosis (page 21).

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 [REDACTED], published by the [REDACTED]... 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 at 54, with a high school education and an unskilled work history who is limited to light work is not considered disabled pursuant to Medical Vocational Rule 202.13.

It should be noted that claimant continues to smoke despite the fact that his doctor has told him to quit. Claimant is not in compliance with his treatment program.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial activity without good cause there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that claimant was not eligible to receive Medical Assistance and/or State Disability Assistance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of light or sedentary work even with his impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.

/s/ _____
Landis Y. Lain
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: June 7, 2011

Date Mailed: June 8, 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/tg

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