

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

IN THE MATTER OF:



Reg. No: 2010-53610

Issue No: 2009; 4031



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 October 26, 2010. Claimant personally appeared and testified. Claimant was represented at the hearing by L&S Associates.

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 25, 2010, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.
- (2) On April 26, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work.
- (3) On May 20, 2010, the department caseworker sent claimant notice that his application was denied.
- (4) On August 11, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (5) On September 17, 2010, the State Hearing Review Team again denied claimant's application stating in its' analysis and recommendation: the

evidence supports that claimant would reasonably be limited to performing light exertional tasks of a simple a repetitive nature. 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 of a simple and repetitive nature. Therefore, based on the claimant's vocational profile of 48 years old, a high school education and a history of medium skilled employment, MA-P is denied using Vocational Rule 202.20 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA was not applied for by the claimant. Listings 1.02, 1.03, 1.04, 3.01, 4.04 and 11.14 were considered in this determination.

- (6) The hearing was held on October 26, 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 December 9, 2010.
- (8) On December 20, 2010, the State Hearing Review Team requested additional medical information in the form of a physical examination and stated that we do not have current treatment notes since the surgery of November 2010. The evidence in the file is inadequate to assess all of claimant's alleged impairments. The department is to get current medical records from [REDACTED] for November 2010 to the present.
- (9) This Administrative Law Judge finds that there is sufficient evidence contained in the record to make a decision as to claimant's disability.
- (10) Claimant is a 49-year-old man whose birth date is [REDACTED]. Claimant is 5'10" tall and weighs 185 pounds. Claimant is a high school graduate. Claimant is able to read and write and does have basic math skills.
- (11) Claimant has worked as a carpenter and a cabinet maker and an electrician.
- (12) Claimant alleges as disabling impairments: coronary artery disease, heart attack in 2008, heart attack in 2010, a triple bypass in November 2010, hypertension, fatigue, back pain, a lower back injury, sciatica 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 April 2009. Claimant does receive [REDACTED] in disability income from work per month. Claimant is not engaged in substantial gainful activity and therefore is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence on the record indicates that claimant testified on the record that he is single and lives with his daughter in a house and he has no children under 18 who live with him. Claimant does not receive any benefits from the Department of Human Services. He does have a driver's license and does drive to

the store 2-3 times per week for 3 miles. Claimant does microwave food and his daughter grocery shops for him. Claimant testified that he does dusting and puts dishes in the dishwasher and usually his hobby is reading and he watches TV all day or sits on the porch. Claimant testified that he can stand for 15-20 minutes at a time and sit for 30-45 minutes at a time. Claimant testified that he can walk 100 yards and he is able to squat, bend at the waist and his knees are fine. Claimant testified that he can shower and dress himself and he can tie his shoes if he is sitting and touch his toes. Claimant testified that his level of pain on a scale from 1-10 without medication is a 10 and with medication is a 5-6. Claimant testified that he is right handed and his hands and arms are fine and his legs and feet have pain. The heaviest weight that he could carry is 5 pounds. Claimant testified that on a typical day he gets up and sits around and reads and takes his medications. Claimant testified that he had a heart attack on November 2008, second heart attack on January 2010 and would be having triple bypass surgery on November 4, 2010, and at that point he would need back surgery.

In the file, claimant's physician provided the classification of patients with disease of the heart and classified claimant with a functional capacity of class III which equals patients with cardiac disease resulting in market limitation of physical activity. They are comfortable at rest. Less than ordinary activity causes fatigue, palpitation, dyspnea and anginal pain. His therapeutic classification was between class C and class D. Class C equals patients with cardiac diseases, ordinary physical activity should be moderated or restricted and whose more strenuous efforts should be discontinued. Class D patients are patients with cardiac disease whose ordinary physical activity should be markedly restricted. (Exhibit B2)

A medical examination report in the file dated October 12, 2010, indicates that claimant was normal in all areas of examination except he was scheduled for surgery for his coronary artery disease and in the neurologic area he had back pain and spinal stenosis. He was 5'9 ¼" and he weighed 189 pounds. His blood pressure was 126/84 and he was right hand dominant and his visual acuity was 20/25 in both eyes, corrected. (Exhibit C1)

The clinical impression is that claimant was deteriorating and his disability was undetermined for the time period. He was to occasionally lift less than 10 pounds but never lift 10 pounds or more and he did not need assistive devices for ambulation. He could use his upper extremities for simple grasping and reaching and fine manipulating but not pushing and pulling and could not operate foot or leg controls and the medical findings were chronic low back pain and radiculopathy, coronary artery disease and hypertension. He did not have any mental limitation. This was filled out by his internal medical doctor Ahmed. (Exhibit C2)

A cardiovascular consultants report of October 21, 2010, indicates that in the cardiovascular examination claimant had normal S1 and S2 grade 1/6 apical long systolic murmur, grade 1-2/6 early diastolic murmur of aortic regurgitation; no gallop. The assessment was 3 vessel coronary artery disease with recurrent angina, hypertension. (Exhibit D-1)

A November 4, 2010, examination and operative surgery indicates that claimant had cardiomegaly. The lungs were clear. No plural effusion or pneumothorax. Cardio mediastinal silhouette was unremarkable. There was likely a bullet fragment seen in the left axillary fold. There was no acute cardio pulmonary processing. (Exhibit E4).

The surgical record indicates that claimant was a young African-American gentleman who was presently intubated on mechanical ventilation and sedated. Blood pressure was 118/68 and pulse rate was about 78. He was on a pacer rhythm. Examination revealed oral intubation. There was no jugular venous distension. The examination revealed clear lung fields bilaterally in the chest. There were no wheezes or rhonchi. The patient does not have a lopsided chest tube. He had some adhesions on the left side, hence no chest tube was inserted on the chest cavity. He had mediastinal tube draining, only minimal amount of serosanguinous fluid. His abdomen was soft and non-distended. All lower extremities showed no edema. Presently he was on a total volume of 550 cc of 12 and 100% oxygen. ABG's revealed a PO₂ of over 400 and PCO₂ was 31, PH was 7.46. The respiratory rate was cut down to 12 and repeated ABG's awaited. Hemodynamic parameter was also reviewed. (p. E28).

An internist exam dated July 24, 2010, indicates that an MRI shows spondylolisthesis and some bulging of a disc in the lower lumbar spine. Surgery had been scheduled but until his cardiac status is resolved it is still pending. Even though he has symptoms of numbness in the left leg, there is no sensory impairment. Dorsolumbar range of motion is modestly impaired. Coronary artery disease, he was scheduled for 3 special bypass but it was found that he had insufficient valve, probably mitral studies are undergoing to better define this. Then he would undergo a bypass and then have surgery on his back. Cardiac exam was unremarkable. Claimant had anxiety and depression (p. 97).

This Administrative Law Judge did consider the approximately 200 pages of medical information in making this decision.

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 sufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant has reports of coronary artery disease. Claimant has had 2 heart attacks and had triple bypass surgery. Claimant also has problems for which he does need surgery. Claimant was required to have cardiac rehabilitation once he had his surgery. The clinical impression is that claimant is deteriorating. Therefore, this Administrative Law Judge finds that the medical record is sufficient to establish that claimant has a severely restrictive physical impairment which has lasted or will last the durational requirement of 12 months.

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. However, the evidentiary record is sufficient to find that claimant suffers a severely restrictive physical impairment. For these reasons, this Administrative Law Judge finds that claimant has met his burden of proof at Step 2.

At step 3, the medical evidence of claimant's condition does not give rise to a finding that he would meet the statutory listing in the code of federal regulations.

This Administrative Law Judge finds that claimant's prior work was as an electrician and carpentry and cabinet maker. There is sufficient evidence upon which this Administrative Law Judge bases a finding that claimant is unable to perform work in which he has engaged in the past. Therefore, claimant is not denied disability 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 sufficient objective medical evidence that he does currently lack the residual functional capacity to perform some other less strenuous tasks than in his prior employment and he has established that he is physically unable to do light or sedentary tasks if demanded of him. Claimant's activities of daily living appear to be very limited, in light of the fact that he does have between class C and Class D therapeutic classification and class III functional capacity of disease of the heart. In addition, claimant did have 2 heart attacks and recently had triple bypass surgery on his heart. Therefore, claimant has provided 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 from the date of application. The claimant's testimony as to his limitations is credible and indicates that he cannot currently perform light or sedentary work with his impairments.

Claimant has established by the necessary competent, material and substantial evidence on the record that he is disabled for purposes of Medical Assistance and retroactive Medical Assistance benefits based upon the fact that he has a Class III functional capacity and therapeutic classification of C or D cardiac disease. Claimant has had 2 heart attacks and does also have back problems for which he will require surgery and also has had triple bypass surgery in November 2010. The department is required to initiate a determination of claimant's financial eligibility for the requested benefits if not previously done. Claimant has established that he is disabled based upon the information contained in the record.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant meets the definition of medically disabled under the Medical Assistance program as of the February 25, 2010, application date. This Administrative Law Judge finds that claimant also meets the definition of medically disabled for the purposes of the retroactive Medical Assistance application which was also filed February 25, 2010, and the department can go back 3 months for retroactive Medical Assistance.

Accordingly, the department's decision is REVERSED. The department is ORDERED to initiate a review of the February 25, 2010, Medical Assistance and retroactive Medical Assistance application if it has not already done so to determine if all other non-medical

