

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

IN THE MATTER OF:



Reg. No: 2010-53619
Issue No: 2009
Case No: [REDACTED]
Hearing Date:
November 30, 2010
Genesee County DHS (5)

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 November 30, 2010. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED]

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and retroactive Medical Assistance (retro MA-P)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) On January 27, 2010, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.
- (2) On June 4, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical Vocational Rule 202.20.
- (3) On June 10, 2010, the department case worker sent claimant notice that his application was denied.
- (4) On August 25, 2010, claimant filed a request for a hearing to contest the department's negative action.

- (5) On September 27, 2010, the State Hearing Review Team again denied claimant's application stating in its' analysis and decision: the objective medical evidence presented does not establish a disability at the listing or equivalence level. The collective medical evidence shows that the claimant's impairments are improving and should not prevent all work at least light unskilled for 12 months from the date of onset or from date of surgery. No mental impairment was clinically documented. In following the sequential evaluation process the claimant is not engaged in substantial gainful activity. The claimant's impairments do not meet or equal the intent of a Social Security listing. Therefore, MA-P is denied per 20 CFR 416.909; durational and 20 CR 416.920(e); capacity to perform at least light unskilled work. Retro MA-P wasn't viewed and denied.
- (6) The hearing was held on November 30, 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 January 3, 2011.
- (8) On January 17, 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 light unskilled work. The claimant's impairment's 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 unskilled work. Therefore, based on the claimant's vocational profile of a younger individual, 10th grade education and a light work history; MA-P is denied using Vocational Rule 202.18 as a guide. Retroactive MA-P was considered in this case and is also denied.
- (9) Claimant is a 48-year-old man whose birth date is [REDACTED]. Claimant is 6'5" tall and weighs 275 pounds. Claimant has a 10th grade education and no GED. Claimant was in special education for reading and social studies when he was in school. Claimant testified that he can't read very well and he can add subtract and count money.
- (10) Claimant last worked May 2009 as a laborer spreading glue and laying down sub-floors for laying tile. Claimant has also worked framing condos and for a construction company as a laborer and at [REDACTED].
- (11) Claimant alleges as disabling impairments: coronary artery disease, arthritis, learning disability, pace maker placement, stent placement and

depression, kidney disease, fatigue and dizziness as well as blurred vision and uncontrolled hypertension and sleep apnea.

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 May 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 in a house with his wife and her 3 children and he is married with no children under 18 of his own. Claimant does not have any income and does not receive any benefits from the Department of Human Services and his wife supports him. Claimant testified that he does have a driver's license and he does drive 2 times per week to alcoholic's anonymous meeting which is about 5 miles away. Claimant can cook with the microwave and usually warm stuff up and his wife grocery shops for him and picks up the house for him. Claimant testified that he watches TV 1 hour unless it's Monday night football and he doesn't have any other hobbies and he does no house work. Claimant testified that he can stand for 15 minutes, sit for 30 minutes at a time and can walk 1-2 blocks. Claimant testified that he cannot squat but he can bend at the waist. Claimant stated that his back has arthritis pain and his knees have gout and arthritis and grinding joints. Claimant testified that his level of pain on a scale from 1-10 without medication is a lot and with medication is a 2-3 usually. Claimant is right handed and he stated that he had numbness in his arms and hands and numbness in his legs and feet. The heaviest weight that claimant could carry is 10 pounds and he said he can carry nothing repetitively. Claimant testified that he doesn't smoke and he stopped drinking 10 years ago and he stopped taking drugs 10 years ago. Claimant testified that he wakes up at 8:00 a.m. to get up and set the table and drinks coffee.

A medical examination report dated [REDACTED] indicates that claimant was normal in all areas of examination except that in the respiratory he had sleep apnea and used a C-PAP machine and in the cardiovascular he had pain radiating to his left arm, but normal heart sounds on a pace maker meant he had a slow gait. Claimant was 6'5" tall and weighed 281 pounds and his blood pressure was 116/72 and he was right hand dominant. (B1). The clinical impression is that claimant is stable and he could frequently carry 25 pounds or less and never carry 50 pounds or more. He could stand or walk less than 2 hours in an 8 hour work day and can sit less than 6 hours in an 8 hour work day. Claimant could do simple grasping, reaching, pushing and pulling, fine manipulating with both his upper extremities. Claimant could operate foot and leg controls with both feet and legs but not for longer periods. Claimant had no mental limitations (p. B2).

The claimant was classified as a patient with heart disease, functional capacity class II, which states patients with cardiac disease resulting in slight limitation and physical activity. There are comfortable at rest. Ordinary physical activity results in fatigue, palpitation, dyspnea and anginal pain. The therapeutic classification was class C: patients with cardiac whose ordinary physical activity should be moderately restricted and whose more strenuous efforts should be discontinued (p. B3).

The medical records of evidence presented for review reported the claimant with a history of chest pain and stint in [REDACTED] and a stint and pacemaker in [REDACTED] (pp. 11-13, 9). Follow-up testing included cardiac blood labs ([REDACTED])

February 1, 2010, were normal and revealed the heart and pace maker functioning adequately (pp. 22, 40, 28, 59 and 27).

On physical examination the claimant was 77" tall and weighed 279 pounds. The heart had normal rate and rhythm. Blood pressure was 120/73, no edema. Peripheral pulses were present and equal bilaterally. The lungs were clear to auscultation. Gait and mobility was normal. Range of motion of all the major joints were within normal limits (p. 67, 26, 21 and 41).

The treating physician opined [REDACTED] no mental limitations and that the functional restrictions were temporary and the claimant was expected to return to work in 3-6 months. Medical reports of [REDACTED] revealed the claimant with good insight and judgment and good affect and mood (pp. 22, 26, 45 and 68). The claimant's work history is comparable to or exceeds his formal educational level.

The claimant has a history of coronary angioplasty in [REDACTED] and a pacemaker in [REDACTED]. The lumbar x-ray showed multilevel degenerative changes (p. 27). The physical examination in [REDACTED] reported his blood pressure was controlled. He has a history of sleep apnea which is being treated with a C-PAP machine. He experiences chest pain radiating to the left arm. The echocardiogram done [REDACTED] was normal. Heart sounds were normal. He had a slow gait (pp R1-R2). The mental status in [REDACTED] was normal with no limitations (R1-R2). The claimant has a long work history as a framer and doing remodeling (p. 10).

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 a gain 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 48), with a less than high school education and an unskilled work history who is limited to light work is not considered disabled.

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

DECISION AND ORDER

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

Accordingly, the department's decision is AFFIRMED.

Landis

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

Date Signed: March 15, 2011

Date Mailed: March 16, 2011

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

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

LYL/alc

cc:

