

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: 2010-55041
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 16, 2010
Jackson County DHS (49)

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 16, 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)?

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 17, 2010, claimant filed an application for Medical Assistance and Retroactive Medical Assistance benefits alleging disability.
- (2) On June 14, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work.
- (3) On June 17, 2010, the department case worker sent claimant notice that his application was denied.
- (4) On September 13, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (5) On October 13, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and decision: The impairments are medically managed. The claimant retains the capacity to

perform at least unskilled light work. The claimant retains the residual functional capacity to perform light unskilled work per the provisions of 20 CFR 416.967(b) and 20 CFR 416.968(a), and using Vocational Rule 202.17 as a guide. This may be consistent with past relevant work. However, there is no detailed description of the past work to determine this. In lieu of denying benefits as capable of performing past work and denials of other work based on a vocational rule will be used.

- (6) Claimant is a 48-year-old man whose birth date is [REDACTED]. Claimant is 5'11-1/2" tall and weighs 270 pounds. Claimant attended the 10th grade and has no GED. The claimant is not able to read and write and can count money and add.
- (7) Claimant last worked March 2008 as a general laborer. Claimant has worked as a laborer or janitor all of his life.
- (8) Claimant alleges as disabling impairments: Coronary artery disease, hypertension, shortness of breath, learning disability, sleep apnea, asthma, emphysema and depression.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;

- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).

3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant is not engaged in substantial gainful activity and has not worked since 2008. Claimant is not disqualified from receiving disability at Step 1.

In addition, claimant does receive unemployment compensation benefits. In order to receive unemployment compensation benefits under the federal regulations, a person must be monetarily eligible. They must be totally or partially unemployed. They must have an approvable job separation. Also, they must meet certain legal requirements which include being physically and mentally able to work, being available for and seeking work, and filing a weekly claim for benefits on a timely basis. The Administrative Law Judge finds that claimant has not established that he has a severe impairment or combination of impairments which have lasted or will last the durational requirement of 12 months or more or have kept him from working for a period of 12 months or more. Claimant did last work in 2008. Claimant does receive unemployment compensation benefits in the amount of \$[REDACTED] every two weeks.

The objective medical evidence on the record indicates that claimant is married and lives with his wife in a house. Claimant has no children under 18 and does receive unemployment compensation benefits. Claimant has not received any benefits from the Department of Human Services. Claimant does have a driver's license and drives one time every two weeks but is afraid to drive because he falls asleep at the wheel. Claimant testified that he does cook eggs and macaroni two times per week and that he grocery shops one time per week and usually rides an Amigo cart. Claimant testified that he does dust and does dishes and laundry and he cuts the grass by riding a mower. Claimant testified that he washes television two to three hours per day and that he can stand for one hour and sit for three hours at a time. Claimant testified that he can walk one block and can shower and dress himself and bend at the waist but cannot squat, tie his shoes or touch his toes. Claimant testified that his knees were bad and

his back locks up and hurts. Claimant testified that he is right-handed and that he has carpal tunnel syndrome which he has had for the last 10 to 15 years. Claimant testified that he is flat-footed and his feet hurt. Claimant testified he can carry 10 pounds and does not smoke, drink or do drugs. Claimant testified that on a typical day, he gets up and goes to get coffee and plays with the cats and sits around and he does some of his chores. Claimant testified that his wife helps him to read and makes certain that he takes his pills. This Administrative Law Judge did consider also the 13 pages of medical reports when considering this decision. A Medical Examination Report in the file dated May 21, 2010 indicates the claimant is obese but was normal in areas of examination. His height was 71.5 inches and he weighed 276 pounds. His blood pressure was 205/138.

On March 5, 2010 discharge summary indicates that claimant was diagnosed with unstable angina, status post diagnostic cardiac catheterization with percutaneous coronary intervention of the proximal right coronary artery, mid right coronary artery and right posterior descending artery with Bariatric metal stents and angioplasty closure. He was diagnosed with known coronary artery disease with history of multi vessel percutaneous coronary interventions. A preserved left ventricular function. Hypertension under suboptimal control in part due to noncompliance in socioeconomic issues. His dyslipidemia, a remote smoker, Type II diabetes and morbid obesity (Page 195). A March 4, 2010 admissions summary indicates that claimant is an obese gentleman in no acute distress. His blood pressure was 195/144, heart rate is 91 beating, 80 times a minute. He was saturating 90% in room air and he weighed 267 pounds. His exam was grossly benign with cranial nerves 2 through 12 intact. The neck exam showed no jugular venous distention or thyromegaly. His lungs were clear to auscultation. He had distant heart sounds with a somewhat displaced PMI with regular heart sounds. No murmurs, rubs or gallops are heard. His abdomen was obese and soft with no organomegaly or hepatomegaly. The extremities showed no edema clubbing or cyanosis. He is alert and oriented x3 with nonfocal examination. He has 2+ carotid and plus peripheral pulses with no bruits in the vascular area. The extremities showed no edema and no clubbing or cyanosis. His EKG showed sinus rhythm with evidence of inferior myocardial infarction. Lead 3 has a supple ST elevation which is likely due to aneurysmal changes. He does have supple ST-T wave changes in the lateral leads that are consistent with his ischemia (page 192).

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 was stable.

Claimant alleges the following disabling mental impairments: Underlying disability and 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 48), with a less than high school education and an unskilled work history who is limited to light work is not considered disabled.

2010-55041/LYL

cc:

