

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No: 2010-5584
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
December 16, 2009
Wayne 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 December 16, 2009. Claimant personally appeared and testified.

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 September 14, 2009, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.

(2) On September 24, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical Vocational Rule 202.15.

(3) On September 29, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On September 29, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On November 12, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The evidence of this case does not support the treating physician's comments. The evidence supports a finding of retaining the ability to perform light exertional tasks. A recent physical examination purchased by the Social Security Administration has been added to the file. The claimant retains the ability to perform light exertional tasks with no psychiatric limitations. The claimant's past relevant work is described as light and unskilled. Therefore, the claimant would retain the ability to perform his past relevant tasks at this time. This decision denies Medicaid-P and retroactive Medicaid-P. Listings 3.02, 4.04, 9.08, 11.14, and 12.04/06 were considered in this determination.

(6) The hearing was held on December 16, 2009. 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 4, 2010.

(8) On January 5, 2010, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing past work and that he retains the physical residual functional capacity to perform light, unskilled work. The claimant's past work was light, unskilled. The claimant retains the capacity to perform past relevant work.

(9) Claimant is a 52-year-old man whose birth date is [REDACTED]. Claimant is 5' 10" tall and weighs 290 pounds. Claimant is a high school graduate and has three years of college where he studied medical assistance. Claimant is able to read and write and does have basic math skills.

(10) Claimant last worked November 2008 as a truck driver. Claimant has worked as a truck driver for approximately 15 years and worked in sales and sold tools at [REDACTED] for 5 years.

(11) Claimant alleges as disabling impairments: depression, fatigue, shortness of breath, diabetes mellitus, angina, hypertension, neuropathy, blurry eyes, arteriosclerosis, cardio obstructive pulmonary disease, peripheral neuropathy in his legs, and arthritis in the right hip.

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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) 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 November 2008. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a physical examination dated [REDACTED] indicates that claimant is 5' 11" tall and weighed 280 pounds. His vision without glasses was 20/25 bilaterally. He was right-handed. He was well-developed and obese. He was in no respiratory distress. HEENT: His fundi were not visualized. He had no apparent difficulty hearing. Throat was clear with no exudate. Tongue was in the midline. No thyroid enlargement. The chest was symmetrical. There was expiratory delay. The breath sounds were slightly diminished. The heart had normal sinus rhythm. Blood pressure was 168/86 and 164/88. He was advised about the blood pressure. There was no murmur, gallop, or edema. Peripheral pulses were full and equal. His abdomen was obese and no masses were palpable. There was no incoordination. Light touch sensation was diminished over both lower extremities. Vibration sense was intact at the ankles. There was no joint swelling or redness in the musculoskeletal area. Grip strength was 38 kg on the right and 48 kg on the left, Jamar. He was able to pick up coins with both hands. In conclusion, he had low back pain and right hip pain. He had obesity. He has diabetes with diabetic neuropathy. He had hypertension. He had cardio obstructive pulmonary disease. He had arteriosclerotic heart disease with a history of remote myocardial infarction and recent unstable angina. His history is not characteristic of angina pectoris. The neurological and orthopedic supplemental report indicated claimant could stand, sit, bend, stoop, push, pull, dress and undress, dial a telephone, open the door, make a fist, pick up a pencil, squat and arise from squatting halfway, get on and off the examining table, could do finger-to-finger, finger-to-nose, and heel-to-shin. He was able to walk on his heels and toes and tandem walk. (pp. 53-55)

A Medical Examination Report in the file indicates that on [REDACTED], claimant was normal in most areas of examination and had dyspnea with ambulation and exertion and a systolic ejection murmur and that he had obesity but he ambulated without assistance. He was 5' 11" tall and 270 pounds. Blood pressure was 162/86 and he was right-hand dominant. The clinical impression was that claimant's condition was deteriorating and that he could stand or walk less than 2 hours in an 8-hour day but could sit less than 6 hours in an 8-hour day. He could occasionally lift 10 pounds but never lift 10 pounds more. He could use both of his upper extremities for simple, grasping, reaching, pushing/pulling, and fine manipulating and could operate foot and leg controls with both feet and legs. The limitations were mainly related to cardiac disease and diabetic neuropathy. Claimant had no mental limitations. (pp. 9-10)

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. Claimant testified on the record that he lives with his wife and he's married and has no children under 18 who live with him. Claimant testified that he does have a driver's license and drives 1-2 times per week to short distances. Claimant testified that he does cook 2-3 times per week and cooks things like soup and grilled cheese and that he grocery shops one time per month but he needs help with walking. Claimant testified that he takes out the trash and he does cut the grass with a self-propelled lawnmower and he does fish 1-2 times per year. Claimant testified that he can stand for 5-10 minutes at a time and can sit for a half an hour at a time. Claimant testified that he can walk one block and squatting is difficult and he can bend at the waist, shower and dress himself, but not touch his toes and usually not tie his shoes. Claimant testified that his level of pain on a scale from 1 to 10 without medication is a 9/10 and with medication is a 5. Claimant is right-handed and stated that his hands and arms are fine and that

his legs throb and have fatigue and sharp aching pain. Claimant testified that he can carry 10-15 pounds, but repetitively he can only carry about 2 pounds. Claimant testified that he does smoke cigarettes and smokes approximately a half pack of cigarettes per day and his doctor has told him to quit and he chews Nicorette. Claimant testified that in a typical day he reads magazines, talks to his neighbors, and watches television.

The clinical impression is that claimant is deteriorating; however, there is no finding made as to why the doctor finds claimant to be deteriorating. 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, the DSH-49 has restricted claimant from tasks associated with occupational functioning based upon claimant's 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 testified on the record that he does have 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 mental limitations resulting from his reportedly depressed state. There is no mental residual functional capacity assessment in the record. 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. Claimant's past relevant work was light. Claimant was a truck driver and also sold tools at Sears. As neither job requires strenuous physical exertion, there is insufficient objective medical evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work which he has engaged in, in the past. Claimant would at least be able to sell tools at Sears even with his impairments. Therefore, if claimant had not already been denied at Step 2, he would again be denied 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. The claimant's testimony as to his limitations indicates that he should be able to perform light or sedentary work.

It should be noted that claimant does continue to smoke cigarettes even though 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).

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. Claimant did testify on the record that he does sometimes receive relief from his pain medication. 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.

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.

/s/ _____
Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: March 17, 2010

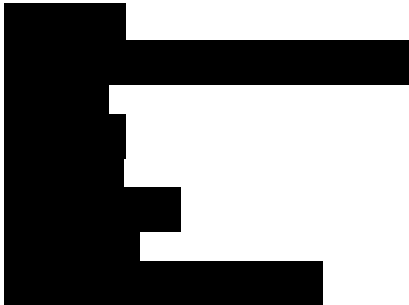
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NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration 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.

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