

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: 2010-9  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
[REDACTED]  
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 [REDACTED]. 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 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 July 10, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On July 17, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical Vocational Rule 202.22.

(3) On July 22, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On August 10, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On October 7, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The claimant was found to have hyperthyroid, an enlarged thyroid gland and exophthalmos. He was admitted for chest pain but they felt is related to costochondritis or due to his increased metabolic rate and heart rate. Catheterization was not indicated. They had been adjusting his medications and in [REDACTED] he had some weight gain. His condition was expected to continue to improve. The medical evidence on record indicates that the claimant's condition is improving or is expected to improve within 12 months from the date of onset or from the date of application. Therefore, MA-P is denied due to the lack of duration under 20 CFR 416.909. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 as the impairments would not preclude all work for 90 days.

(6) The hearing was held on November 12, 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 28, 2010.

(8) On January 29, 2010, the State Hearing Review Team again denied claimant's application stating in its' analysis and recommendations: The claimant has a limited work history, only a few years of gainful employment as a short order cook. The medical evidence supports that the claimant retains the ability to perform light exertional tasks of a simple and

repetitive nature. The claimant retains the physical residual functional capacity to perform light exertional work of a simple and repetitive nature. The claimant's past work was as a short order cook. Therefore, the claimant retains the capacity to perform his past relevant work. Medicaid-P is denied per 20 CFR 416.920(a). Retroactive Medicaid-P was considered in this case and is also denied. State Disability is denied per PEM 261 due to the capacity to perform past relevant work. Listings 4.04, 9.02, 12.04 and 12.09 were considered in this determination.

(9) Claimant is a 47-year-old man whose birth date is [REDACTED]. Claimant is [REDACTED]" tall and weighs [REDACTED] pounds. Claimant recently lost 65-70 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills. Claimant attended two years of culinary trade school.

(10) Claimant last worked in [REDACTED] for [REDACTED] as a supervisor in shipping and receiving. Claimant has also worked as a restaurant sous chef, and from [REDACTED] laying laminate and hardwood floors.

(11) Claimant alleges as disabling impairments: hyperthyroidism, hypertension, severe pain in his legs, arms and neck, shortness of breath and breathing problems, fatigue, bells palsy, heart problems, depression and anxiety.

#### CONCLUSIONS OF LAW

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 2007. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that thyroid testing dated [REDACTED] [REDACTED] showed that claimant's thyroid function was hyperthyroid and his thyroid gland was enlarged in size indicating possible goiter (p18).

The claimant was admitted in [REDACTED] [REDACTED] due to chest pain. The claimant was extremely thin as he had lost 63 pounds in the last 6 months. Eye examination revealed exophthalmos and a positive lid lag. He had point tenderness of the left chest and the stress test was questionably positive. Costochondritis was possible and they did not feel a catheterization was necessary as the primary concern was control of his heart rate and metabolic rate (Records from Disability Determination Services).

Notes from [REDACTED] indicate that they were still adjusting the claimant's medications. He was noted to have weight gain but no weight was provided (Records from Disability Determination Services).

On July 7, 2009, claimant was alert and oriented x3 and in no acute distress. His temperature was 97.9, blood pressure was 143/69, and pulse was 74. Evidence of proptosis, exophthalmia of the eyes bilaterally, left lower, greater than the right. Heart is regular. Lungs are clear. Abdomen soft. Extremities, no edema bilaterally. Thyroid is 3 times normal. No discrete palpable nodules. (p34)

On [REDACTED] claimant's baseline EKG on [REDACTED] showed normal sinus rhythm with incomplete right bundle branch block. During the stress test, the echo portion of the stress test showed basal inferoseptal hypokinesis, although ejection fraction was 60%. The stress EKG was consistent with ischemia, but was felt to be limited by resting EKG abnormalities. (p31)

An [REDACTED], psychological examination indicates that the claimant presented as being inadequate, in overt contact with reality, with no evidence of an overt thought disorder. He appeared to be an accurate historian without having the tendency to exaggerate or minimize symptoms. The claimant generally answered questions in a logical, goal-directed fashion with no loose, circumstantial or tangential associations. Claimant presented as hypervocal. He denied auditory and visual hallucinations and denied feeling others are plotting against him. However, he reported suicidal feelings and denied any history of attempts. He denied believing that he has magical or unusual powers or that he receives secret messages from the radio or TV. The claimant said he feels depressed most of the time these days. The claimant spelled his first and last name correctly and knew today's date. He knew the name of the office approximately as "Medical Center something". In his memory, the claimant was able to repeat 3 digits forward

and 2 digits backward with demonstration. He repeated three of three objects immediately after they were stated to him. When asked to recall the three objects after a delay of three minutes he recalled 1 of 3 objects, remembering key, but forgetting pencil and quarter. When the claimant was asked the past presidents in reverse order, "Bush". He knew his age was 47. When asked to name five large cities, the claimant said "like what", when asked again repeating the information he then said "Texas, Florida". When asked about current famous people in the present, the claimant said "Steve Harvey, Fred Sanford, he comes on at night". When asked about current events claimant stated that he didn't know and he watched sports sometimes. Calculations, when asked to subtract 7's from 100, the patient replied "93, 86, 79". The claimant stated he was great in bookkeeping and math in high school. The claimant said  $4+7=11$ ,  $16-9=6$ ,  $4 \times 6+24$ , and  $42/7=7$ . In abstract thinking in response to "the grass is greener on the other side of the fence", claimant said the sun is on that side. In response to "don't cry over spilled milk", the claimant stated that he didn't know. In similarities and differences, when asked how an orange and a banana are alike, the claimant stated that they are not alike and when asked how they are different the claimant replied that one is an orange and one is a banana. When asked what he would do if he found a stamped-addressed envelope, he stated that he would mail it. When asked what he would do if he discovered a fire in a theatre, he said he would run. Claimant was diagnosed with major depression, dependent personality disorder and had a GAF of 49. The prognosis was fair. Based up the examination the claimant demonstrated some cognitive strength in terms of capacity to concentrate as evidenced by his calculation abilities. He also demonstrated some strength in terms of immediate and short term memory and the capacity to pay attention with at least a moderate level of ability in those areas. Thus, he appeared to be able

to be capable of engaging in simple work type activities, remembering and executing a two or three step procedure on a sustained basis, insofar as his physical condition will allow.

A Disability Determination Services examination on October 6, 2009 indicates that, claimant was a 47-year-old man who was alert, oriented, not fully cooperative and coherent. The claimant refused most of the exam. He is not in any acute distress. His height is 5'8" tall and weight is 161 pounds. Blood pressure was 136/74. Vision is 20/70 for the right eye and 20/40 for the left eye without glasses. Examination of the TLS spine and cervical spine reveals curvature is midline. Tenderness was present posteriorly in the cervical and lumbar and the LS spine. No spasm was identified in the cervical spine, but there were spasms noted from T6 down including the LS spine which corrects in a relaxed position. Range of motion was refused. Spurling's test was refused. Lumbopelvic rhythm was refused. Straight leg raising, Faber's test and Gaenslen's test and femoral stretch test were within normal limits. Dexterity evaluation revealed that the claimant could pick up a pencil, coin, button a shirt, tie their shoes, and make a fist. Grip strength was 4+/5 bilaterally, poor effort. The claimant is right-handed. Examination of the upper and lower extremities revealed no tenderness, redness, warmth or effusion. Range of motion was refused in all extremities except the hands bilaterally. Muscle strength in both upper and lower extremities is 4+/5. Deep tendon reflexes are unattainable as the claimant was not relaxed. There are no pathological reflexes. Sensory examination is intact. Coordination was intact in the upper extremities but testing was refused for the lower extremities. Gait evaluation revealed no stumbling, lurching, falling, pain, atrophy and instability. The claimant was using a cane in the right hand but no difference was noted. The claimant is not in need of a cane. The claimant refused to do heel, toe, and tandem walking and squatting. The claimant refused to dress, undress and get on and off the table. A client who refuses treatment for a

correctable or treatable impairment is not considered disabled. BEM 260; 20 CFR 416.930, 20 CFR 416.936.

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 insufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment that meets the durational requirement of 12 months. Although, claimant did have hyperthyroid and an enlarged thyroid and Graves Disease, his condition had improved and therefore, his condition does not meet the duration. Claimant has reports of pain in multiple areas of his body; however, there are insufficient corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. A medical examination report in the file indicates that on [REDACTED] claimant weighed 145 pounds and his blood pressure was 108/80. The clinical impression was that he was stable and he could occasionally lift 10 pounds, frequently lift less than 10 pounds and never lift 20 pounds or more. Claimant couldn't stand or walk less than 8 hours in an 8-hour work day and did not need assistive devices for ambulation. Claimant could do simple grasping, reaching and fine manipulating with neither of his upper extremities but to push and pull and he could not operate foot and leg controls. (pp 16-17)

The medical examination report is inconsistent with the great weight of the evidence contained 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.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers mental limitations resulting from his reportedly depressed state. 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.

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 contained in the file on depression and cognitive dysfunction that is so severe that it would prevent claimant from working at any job. Claimant does not appear to have severe restrictions of his physical activity or activities of daily living.

The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. This Administrative Law Judge finds the medical records are insufficient to establish claimant has a severely restrictive physical 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. As a supervisor in shipping and receiving does not require 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. 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. At the physical examination, claimant was less than fully cooperative and outright refused several requested tests. The claimant also demonstrated no psychiatric difficulty such as memory impairment.

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

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.

#### DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that 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 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/  
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Landis Y. Lain  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: March 31, 2010

Date Mailed: March 31, 2010

**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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