

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: 2010-9506

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date: [REDACTED]

[REDACTED]

Shiawassee 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, an in-person hearing was held on January 13, 2010. Claimant personally appeared and testified. [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 April 27, 2009, claimant filed an application for Medical Assistance and Retroactive Medical Assistance benefits to January 2009.

(2) On July 23, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical Vocational Rule 202.21.

(3) On August 1, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On October 23, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On December 11, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: That claimant is capable of performing work pursuant to Medical Vocational Rule 202.21.

(6) The hearing was held on January 13, 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 14, 2010.

(8) On January 15, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: Claimant is capable of performing other work in the form of light work per 20 CFR 416.967(b) pursuant to Medical Vocational Rule 202.21

(9) Claimant is a 40-year-old man whose birth date is [REDACTED]. Claimant is 5' 8" tall and weighs 130 pounds but he recently lost 50 pounds.

(10) Claimant is a high school graduate and is able to read and write and does have basic math skills.

(11) Claimant currently works for the [REDACTED] as a prep cook. Claimant works [REDACTED] hours per week and earns [REDACTED] per hour. Claimant also worked as a

carpenter for 18 years. Claimant testified on the record that he was out of work from [REDACTED] and that his work accommodates him by letting him sit every ½ hour and he does no heavy lifting.

(11) Claimant alleges as disabling impairments: Crohn's disease, a colostomy and stoma, severe weight loss, ulcerative colitis and perianal abscess.

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 engaged in substantial gainful activity. Claimant testified that he usually makes about [REDACTED] per month by working as prep cook even though he is accommodated at his job. Therefore, claimant is disqualified from receiving disability at Step 1. However, this Administrative Law Judge will proceed with the sequential evaluation process for the sake of argument.

The objective medical evidence on the record indicates that claimant was admitted

[REDACTED]. His blood pressure was 126/77. His heart rate was 76. His respiratory rate was

18. His oxygen saturation was 99% room air. He reported pain level as a 4 out of 10 and entered the hospital because of abdominal tenderness. He was given morphine for his pain.

An Online Radiology Medical Group report from [REDACTED] indicated that the liver was homogeneous, the spleen was unremarkable. The pancreatic was seen with no mass or surrounding inflammation. Both kidneys demonstrated no edema, hydronephrosis or calculus. The adrenal glands were normal. There was no evidence of para-aortic adenopathy. There was no evidence of free fluid in the air or abdomen. The abdominal aorta is not aneurismal. The gallbladder was present. The lung bases were clear. The urinary bladder, perivesical and perirectal spaces were within normal limits. There was no pelvic masses, free air or free fluid. The descending colon to the rectal wall was diffusely thickened.

The impression was colitis involving the descending colon to rectum without obstruction. (pgs. 39-40) Claimant was determined to be stable and to be discharged home.

A CT evaluation of abdomen and pelvis was performed and it was noted that there was diverticula present within the sigmoid region. There was inflammatory fat stranding present within the pelvis and the region of his diverticula and the possibility for diverticulitis in that area. (pg. 31)

On [REDACTED], claimant had surgery because he had a near obstructing inflammatory sigmoid colon mass. He continued to have severe left-sided abdominal pain and he was determined to have Crohn's colitis with failure of medical therapy and was recommended to have proctocolectomy which would require a permanent stoma. (pgs. 23-24) The claimant underwent a total proctocolectomy with end ileostomy. That surgery was performed on

A Medical Examination Report dated [REDACTED] indicated the claimant was chronically ill and extremely malnourished. He was 5'8" tall and weighed 128 pounds. His

blood pressure was 112/62 and he had abdominal pain and 15 stools a day and he had some bitemporal muscle wasting in the musculoskeletal area but was normal in all other areas of examination. The clinical impression was that claimant was deteriorating. (pgs. 3-4)

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. Although claimant did have all sorts of colitis and underwent a total proctocolectomy and end ileostomy, his condition has improved. Claimant now weighs 130 pounds and is currently working and has been working since [REDACTED] shortly after his surgery. Claimant testified that he can stand for 15 minutes, sit for 15 minutes, walk 100 yards, shower and dress himself, tie his shoes and touch his touch. Claimant testified that his level of pain on a scale from 1 to 10 without medication is an 8 and with medication is a 2. Claimant testified he does have arthritis in his hands and arms and arthritis in his knees and legs, that he can carry 25 pounds and he can carry 10 pounds repetitively. Claimant testified that although he is working, his job allows him to sit down every half hour. The DHS-49, medical examination report, in the file indicates that claimant is normal in all examination areas with the exception of bitemporal muscle wasting and extreme malnutrition. However, the date of the examination was [REDACTED] before his surgery. Although claimant's condition was severe at the time of the surgery, his impairments do not meet duration. Claimant does have a colostomy but 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 claimant has restricted himself from tasks associated with occupational functioning based upon his reports of pain (symptoms) rather than medical findings. However,

since claimant is working approximately [REDACTED] hours per week earning [REDACTED] per hour, his condition would not be considered severe for the durational period of 12 months or more. This Administrative Law Judge finds that 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 also finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

There is no evidence in the record indicating claimant suffers mental limitations resulting from his reportedly depressed state. Claimant did testify that he is depressed because he lost his girlfriend and his life has changed so severely because of his recent surgery. Claimant testified that he is anxious.

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 no Mental Residual Functional Capacity Assessment in the record. 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. 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. Claimant's representative has requested that this Administrative Law Judge consider Listing 5.07a. Listing 5.07a is regional enteritis with persistent or recurrent intestinal obstruction evidenced by abdominal pain, distension, nausea and vomiting and accompanied by stenotic areas of small bowel with proximal intestinal dilation.

This Administrative Law Judge finds that although claimant did have some of the problems and was diagnosed with colitis, he received a colectomy; he received a colectomy which means that he no longer has ulcerative colitis or diverticulitis in the large intestine. Therefore, claimant's impairments do not meet Listing 5.07a.

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 past relevant work. Claimant probably can no longer perform his work as a carpenter because he cannot do heavy lifting. However, he is currently working as a prep cook, 20 hours per week, earning \$10 per hour. Even though he is being accommodated at his job, there is insufficient objective medical evidence upon this Administrative Law Judge could base a finding that claimant is unable to perform work which he is currently engaged in. 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.

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. In addition, claimant did testify that he does receive some substantial 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. It should also be noted that claimant continues to smoke a pack of cigarettes per day even though his doctor told him to quit. Claimant did testify that he is in a smoking cessation program. However, 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 gainful activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

The objective medical evidence in the record indicates that under the Medical-Vocational guidelines, a younger individual (age 40), with a high school education and an unskilled work history, who is limited to light work is not considered disabled pursuant to Medical Vocational Rule 202.21.

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 claimant is currently working. 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 31, 2010

Date Mailed: April 1, 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.

LYL/vmc

B. [REDACTED]