

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: 2010-9971
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 27, 2010
Jackson 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 27, 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 May 11, 2009, claimant filed an application for Medical Assistance and retroactive Medical Assistance for the months of March and April 2009, alleging disability.
- (2) On July 15, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On July 20, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On October 20, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On December 23, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of light work per 20 CFR 416.967(b) and unskilled work per 20 CFR 416.968(a) pursuant to Medical Vocational Rule 202.18, and stated that this may be consistent with past relevant work. However, there is no detailed description of past work to determine this. In lieu of denying benefits as being capable of performing past work, a denial to other work based on the Vocational Rule will be used. Applicable listings were 4.01, 3.01, 9.01, and 1.01.

(6) Claimant is a 47-year-old man whose birth date is [REDACTED] Claimant is 5' 11" tall and weighs 366 pounds. Claimant attended the 10th grade and has no GED. Claimant can read and write magazines and the newspaper and retain about 40%, and he does have basic math skills.

(7) Claimant last worked June 3, 2008 as an over-the-road truck driver. Claimant has also worked as a bouncer, as a worker stocking bars, and as a restaurant cook.

(8) Claimant alleges as disabling impairments: congestive heart failure, diabetes mellitus, arthritis, chronic pulmonary insufficiency, exogenous morbid obesity, sleep apnea, back and knee pain and neuropathy.

(9) Claimant receives \$ [REDACTED] per week in Unemployment Compensation Benefits.

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. However, claimant does receive Unemployment Compensation Benefits in the amount of \$ [REDACTED] per week.

In order to be eligible to receive Unemployment Compensation Benefits, a person must be monetarily eligible, totally or partially unemployed, have a provable job separation and meet certain weekly requirements, which include being physically and mentally able to work, being available for and seeking work, and filing weekly claims for benefits on a timely basis. Under certain conditions, a person who has a disability may be able to limit his or her availability to part time only. A claimant can qualify for Unemployment Compensation Benefits by providing documentation from a licensed physician which establishes that: a) he or she has a physical or mental impairment that is chronic and is expected to be long-term or permanent, and b) the impairment leaves him or her unable to work full time, and c) demonstrates the impairment does not effectively remove him or her from the workforce.

This Administrative Law Judge determines that based upon claimant's receipt of Unemployment Compensation Benefits, that he holds himself out as ready and able to work and therefore, is disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a medical report, dated June 11, 2009, indicates that claimant was 70 1/2" tall, weighed 360 pounds, his pulse was 104 beats per minute, his respiratory rate was 24 per minutes, and his blood pressure was 184/76. His vision without glasses is 20/40 bilaterally. His HEENT: pupils were equal and reactive. There was no jaundice or pallor. There was no throat redness. Neck is soft and subtle. There is no

thyromegaly or lymphadenopathy. There is no carotid bruits or jugular venous distention. In the lungs: there was coarse breath sounds and a few scattered bilateral rhonchi. There is no bronchial breathing. Percussion is hyperresonant. Anterior and posterior chest wall is normal. No accessory muscles or respiration are used. There is no cyanosis or clubbing noted. In the cardiovascular: 1st and 2nd heart sound rhythm is regular. Peripheral pulses cannot be felt in the feet. The feet were warm and pink with good capillary refill. He has 1+ pitting edema. There is no calf tenderness. Abdomen: obese, soft and non-tender. There is no rebound or guarding. Bowel sounds are positive. The neurological examination: The patient is alert and awake and oriented x3. Speech is normal. Cranial nerves III-XII appear intact. Power is 5/5 in all four realms. Muscle bulk and tone are normal in the upper and lower extremities bilaterally. He cannot walk on heels or toes and cannot squat down. He can button clothing but cannot tie his shoelaces. The patient can get up and onto the examination table independently. The musculoskeletal system: Hands do not show any sign of synovitis. Wrists, elbows and shoulders are not showing swelling, redness or tenderness. Range of motion is normal. Cervical spine does not show tenderness or spasms. Range of motion is normal. Lumbosacral spine shows tenderness on palpation with paraspinal muscle spasms and decreased range of motion due to pain. Hips, knees and ankles do not show any redness or swelling or tenderness. Range of motion is normal. This MSS statements are based upon the disclosing of observations of conditions and impairments of the claimant. The medical consultant is not a vocational expert. (Pages 71,72)

A medical examination report, dated March 10, 2009, indicates that the clinical impression is that claimant is stable and that he can occasionally lift 25 pounds, frequently lift 10 pounds, and never lift over 50 pounds or more. Claimant can stand or walk less than 2 hours in an 8-hour workday and did not require any assistive device which is medically required and needed for ambulation. Claimant could do simple grasping and reaching with both hands and

arms, and could do pushing and pulling and fine manipulating with his left hand, but not with the right hand. Claimant had no mental limitations, but was determined to have chronic depression.

(Pages 64,65)

On March 18, 2009, claimant was seen for sleep apnea. The doctor's report indicates that claimant was a 46-year-old gentleman with exogenous morbid obesity with a BMI of 51. Claimant was awake, alert, and oriented x3, and in no acute distress with exogenous morbid obesity. His pulse was 76, blood pressure 131/61, temperature 97.9, respiratory rate was 20, height was 5' 11" and weigh was 365 pounds. Neck circumference is 58.5 cm, with F4 sleepiness scale of 14. HEENT: pupils were round and reactive to light. Extraocular muscles intact. Nose with patent nasal passages bilaterally, no nasal mucosal injection or polyps on 3 liters of oxygen by nasal cannula. Mouth has good dentition. No oropharyngeal exidate or thrush. Neck was thick and subtle. Could not appreciate any JVD, although the patient is sitting in a chair, no thyromegaly. The trachea is mid-line. In the heart, regular S1 and S2, no gallops, rubs or murmurs. Lungs: Lungs with diminished but equal breath sounds bilaterally. Mild expiratory wheezing, especially on the right side with expiratory wheezing on the same side. The abdomen was obese, soft, non-tender with positive bowel sounds. No hepatosplenomegaly. No masses. Lower extremities with +2 to 3 pitting edema bilaterally. It was determined that claimant would probably need a bi-PAP. (Pages 61, 61) Medical report (page 55) indicates the claimant was placed on oxygen for severe obstructive sleep apnea and that he had very good objective improvement with CPAP in a sleep lab. (Page 55)

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. Claimant has reports of

congestive heart failure and pain in several areas of his body; however, there are insufficient corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. The objective medical reports indicate that claimant does have a history of congestive heart failure and that he does take oxygen based upon his sleep apnea, however, there are no laboratory or x-ray findings that indicate that claimant has any muscle atrophy, or trauma, abnormality or injury that is consistent with a deteriorating condition. The clinical impression is that claimant is stable. No assistive devices are medically required or needed for ambulation. 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 testified on the record that he does not have any mental impairments.

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 that claimant suffers mental limitations. Claimant was able to answer all of the questions at the hearing and was responsive to the questions. Claimant testified that he does not have any mental impairments. 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 does not meet Listing 3.02a.

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 testified on the record that he does have a driver's license and he drives himself once a week to the grocery store. Claimant testified that he does cook every day and cooks things like eggs, bacon, hamburgers, and chicken. Claimant testified that he does grocery shop once a month and he does need some help getting around but he does use the Amigo cart. Claimant testified that he can stand for 10 minutes, sit for an hour and walk 25 feet. Claimant testified that he cannot squat, but he is able to bend at the waist and shower and dress himself but not tie his shoes or touch his toes. Claimant's level of pain on a scale from 1 to 10 without medication is a 6 to 8, and with medication is a 3 to 4. Claimant testified that he can carry 50 pounds, or repetitively he can carry 15 to 20 pounds at a times, and that he had stopped smoking about 1 ½ months before the hearing. There is no evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform past work as a cook, a driver, or a bouncer. This Administrative Law Judge finds that claimant could probably perform his prior work even with his impairments. 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 does retain bilateral manual hand dexterity. 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 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 at least light or sedentary work.

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 that he does receive relief from the 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. Under the Medical-Vocational guidelines, a younger individual (age 47), with a high school equivalent education and an unskilled work history who is limited to light work is not considered disabled.

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 this case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.

Adm
Departm

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

Date Signed: May 24, 2010

Date Mailed: May 25, 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/cv

cc:

