

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 2011-14121
Issue No: 2009
Case No: [REDACTED]
Hearing Date: August 24, 2011
Marquette 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 August 24, 2011. 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 July 29, 2010, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.
- (2) On September 3, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work.
- (3) On September 7, 2010, the department caseworker sent claimant notice that his application was denied.
- (4) On October 4, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (5) On October 19, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommended decision:

the objective medical evidence present does not establish a disability at the listing or equivalence level. The collective medical evidence shows that the claimant is capable of performing light work. The claimant's impairments do not meet/equal the intent or severity of the Social Security Listing. The medical evidence of record indicates that the claimant retains the capacity to perform light work. Therefore, based on the claimant's vocational profile of a younger individual, 9th grade education, and unskilled work history, MA-P is denied using Vocational Rule 202.17 as a guide. Retroactive MA-P was considered in this case and is also denied.

- (6) On the date of hearing claimant is a 44-year-old man whose birth date is May 13, 1967. Claimant is 6'5" tall and weighs 527 pounds. Claimant attended the 9th grade and has no GED. Claimant testified that he can read newspapers but does not understand everything he reads and that he can add and subtract and count money.
- (7) Claimant is currently working for the [REDACTED] delivering papers where he has been working for one year. Claimant works seven days a week for four to five hours a day and earns \$2,600 per month in net monthly income. Claimant has also worked as a cook, laying carpet, and as a bouncer at a bar.
- (8) Claimant alleges as disabling impairments: shortness of breath, knee problems, arthritis, joint problems, and three myocardial infarctions; two in April 2001 and May 2010.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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 engaged in substantial gainful activity because he is working and earning approximately \$2,600 per month. The monthly substantial gainful activity amount for \$2,011 is \$1,000 for a non-blind individual. Claimant is disqualified from receiving disability at Step 1.

The subjective and objective medical evidence on the record indicates claimant testified on the record that he lives with his wife and stepson who is 15 years old. Claimant is married and he has no children of his own. Claimant described that he does have earned income and his wife also receives disability income because she is bedridden. Claimant testified that he does have a driver's license and that he drives every day from [REDACTED] which is 250 miles roundtrip each day. Claimant testified that he does cook everyday. He usually cooks things like macaroni and cheese, and he does grocery shop with no help but he uses the [REDACTED] cart. Claimant testified that he does vacuum and do dishes and that he watches television two hours per day. Claimant testified he does care for his wife by carrying her to the bathroom and she weighs about 142 pounds. Claimant testified that he can stand for 20 minutes, sit for an hour and can

walk a block at a time. Claimant testified that he cannot squat, cannot bend at the waist, cannot tie his shoes nor touch his toes. Claimant testified that his back is sore and that his knees are blown and that he is able to shower and dress himself. Claimant testified that his level of pain on a scale from 1 to 10 without medication is 7 and with medication is a 3. Claimant stated that he is right handed and that he does have arthritis in his hands and arms and that he has gout and bad knees and his legs and feet. Claimant testified the heaviest weight he could carry is 30 pounds and he could usually carry 10 pounds possibly. Claimant testified that he does smoke a quarter pack of cigarettes per day and his doctor has told him to quit, so he has cut down. Claimant testified that on a typical day, he gets up and helps his wife and that he works around the house. He makes breakfast, takes his stepson to school, does the paperwork, cooks dinner, and takes care of his wife. He usually helps to bathe and clothe his wife.

The objective medical evidence on the record indicates that claimant underwent cardiac catheterization with a balloon angioplasty in May 2010. (Pages 39 through 40.) His follow-up appointment on June 2010, claimant denies shortness of breath and that his blood pressure was controlled. Lungs were clear and heart was within normal limits. The extremities showed no pitting edema. He is morbidly obese, weighing 426 pounds and is 65 inches tall. The results of his echocardiogram were normal (DDS medical records). He had decreased range of motion of the left knee with swelling. There were no neurological deficits (Pages 39 to 40).

A May 5, 2010 Medical Examination Report indicates that claimant is a noncompliant 42-year-old man who has been stented roughly two weeks ago, failed to take his Plavix and now comes with an acute myocardial infarction. He was taken directly to the catheterization laboratory for investigation and reintervention (Page 46).

The examination revealed that he was in distress with chest pain. He was complaining of shortness of breath. He was diaphoretic. His blood pressure measured 90/60 and heart rate was 83. The exam showed no obvious jugular venous distention but it was difficult to examine him. His lungs displayed no obvious crackles. Heart sounds revealed a normal S1 and S1. His abdomen was morbidly obese. His extremities were warm. His vascular access site seem to be reasonably well preserved (Page 45).

A May 10, 2010 echocardiogram indicates that the ejection fraction is estimated around 40%. There is akinesis of the apical one-half to one-third of the ventricle, septum and anterior wall. Apex is round and akinetic (Page 33). The impression was normal left ventricular side, borderline or mild thickness consistent with borderline LVH. The ejection fraction is 40% or possibly a little better than that. They are the large area of the akinesis of the apical one-half to one-third of the septal wall apex is round and akinetic and involves apical aspect of the inferior lateral wall. A small pericardial effusion is noted. No left ventricular outflow tract gradient can be seen at rest or with valsalva. No significant mitral insufficiency or aortic valve slight abnormality is identified. Mild enlargement of the left atrium (Page 34).

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 pain in multiple areas of his body; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. There are no laboratory or x-ray findings listed in the file which support claimant's contention of disability. 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.

Claimant alleges no disabling 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 claimant suffers severe mental limitations. There is no mental residual functional capacity assessment in the record. There is insufficient evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. Claimant was oriented to time, person and place during the hearing. Claimant was able to answer all of the questions at the hearing and was responsive to the questions. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. For these reasons, this Administrative Law Judge finds that claimant has failed to meet his burden of proof at Step 2. Claimant must be denied benefits at this step based upon his failure to meet the evidentiary burden.

If claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of claimant's condition does not give rise to a finding that he would meet a statutory listing in the code of federal regulations.

If claimant had not already been denied at Step 2, this Administrative Law Judge would have to deny him again at Step 4 based upon his ability to perform his past relevant work. There is no evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work in which he has engaged in, in the past.

Therefore, if claimant had not already been denied at Step 2, he would be denied again at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the [REDACTED], published by the [REDACTED]... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

Claimant has submitted insufficient objective medical evidence that he lacks the residual functional capacity to perform some other less strenuous tasks than in his prior employment or that he is physically unable to do light or sedentary tasks if demanded of him. Claimant's activities of daily living do not appear to be very limited and he should be able to perform light or sedentary work even with his impairments. Claimant has failed to provide the necessary objective medical evidence to establish that he has a severe impairment or combination of impairments which prevent him from performing any level of work for a period of 12 months. The claimant's testimony as to his limitations indicates that he should be able to perform light or sedentary work.

There is insufficient objective medical/psychiatric evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. Claimant was able to answer all the questions at the hearing

and was responsive to the questions. Claimant was oriented to time, person and place during the hearing. Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to claimant's ability to perform work. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity. Claimant is disqualified from receiving disability at Step 5 based upon the fact that he has not established by objective medical evidence that he cannot perform light or sedentary work even with his impairments. Under the Medical-Vocational guidelines, a younger individual (age 44), with a less than high school education and an unskilled work history who is limited to light work is not considered disabled.

It should be noted that claimant continues to smoke despite the fact that 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).

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 determined that claimant was not eligible to receive Medical Assistance and retroactive Medical Assistance.

Claimant's representative stated that the department had failed to consider claimant for caretaker relative Medical Assistance benefits.

MA is available to parents and other caretaker relatives who meet the eligibility factors in this item. All eligibility factors must be met in the calendar month being tested. If the month being tested is an L/H month and eligibility exists, go to BEM 546 to determine the post-eligibility patient-pay amount.

A caretaker relative is a person who meets all of the following requirements:

Except for temporary absences, the person lives with a dependent child. Use "CARETAKER RELATIVE NONFINANCIAL TEMPORARY ABSENCE" below. Dependent child is defined later in this item.

The person is:

- The parent of the dependent child; **or**
- **The specified relative (other than a parent) who acts as parent for the dependent child. Specified relative is defined later in this item. Acts as parent means provides physical care and/or supervision.** BEM 135, page 1.

When a dependent child lives with both parents, both parents may be caretaker relatives.

Occasionally, a specified relative (other than a parent) who claims to act as parent for the dependent child and the child's parent both live with the child. The client's statement regarding who acts as parent must be accepted. If both the parent and other specified relative claim to act as parent, assume the parent is the caretaker relative. When only the other specified relative claims to act as parent, both the other specified relative and the parent(s) may be caretaker relatives. **Except as explained in the two preceding paragraphs, a child can have only one caretaker relative. This means that if a person is an MA applicant or recipient based on being a caretaker relative, no other person can apply for or receive MA based on being a caretaker relative for the same dependent child.** BEM 135, pages 1-2 (emphasis added)

Claimant alleged on the record that he is a caretaker relative of his 15-year-old stepson. The application contained in the file which was received by the Marquette County Department of Human Services on June 29, 2010 indicates on Page C that when the department asked "Is this person any of the following, Migrant Worker, Seasonal Farm Worker, Foster Child, Adopted Child, Foster Parent, Non-Parent Caregiver, Sponsor of an Alien, Temporarily Absent", the claimant's application is marked "none apply to this person". BEM Item 105. The primary caretaker is the parent who is primarily responsible for the child's day to day care and supervision in the home where the child sleeps more than half the days of the month, when averaged over a 12-month period. Only one parent, the primary caretaker is in the fiscal group and the department must determine a primary caretaker. BEM Item 211, page 2.

In the instant case, claimant is not the stepson's primary caretaker as he is not the child's parent. The child's parent is his mother who is married to claimant. Testimony on the record indicates that at the time of claimant's application, the child and his mother had an open Medical Assistance case. The child received Medical Assistance on his mother's case. A person cannot have two open Medical Assistance cases. The child was therefore a part of the mother's fiscal group and not a part of claimant's fiscal group. Therefore, claimant would not be eligible to be considered for Medical Assistance under the Caretaker Relative category.

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, 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 properly determined that claimant is not the caretaker relative of his fifteen year old stepson. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.



Landis Y. Lain
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: August 30, 2011

Date Mailed: August 30, 2011

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/tg

cc:

