

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

IN THE MATTER OF:



Reg. No: 201114347
Issue No: 2009, 4031
Case No: [REDACTED]
Hearing Date: April 27, 2011
Kent 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 April 27, 2011 .

This hearing was originally held by Administrative Law Judge Jay Sexton. Judge Sexton is no longer affiliated with the Michigan Administrative Hearing System Administrative Hearings for the Department of Human Services. This hearing decision was completed by Administrative Law Judge Landis Y. Lain by considering the entire record.

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 May 4, 2010, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On June 25, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical Vocational Rule 202.20.
- (3) On July 1, 2010, the department caseworker sent claimant notice that his application was denied.
- (4) On July 12, 2010, claimant filed a request for a hearing to contest the department's negative action.

- (5) On February 14, 2011, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The objective medical evidence supports the MRT determination that the Claimant retains the ability to perform light exertional tasks of a simple and repetitive nature. The Claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the Claimant retains the capacity to perform a wide range of light exertional work of a simple and repetitive nature. Therefore, based on the claimant's vocational profile of 42 years old, a high school education and a history of light, unskilled employment, MA-P is denied using Vocational Rule 202.20 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days. Listings 1.02, 1.03, 1.04, 11.14, and 12.04 were considered in this determination.
- (6) On the date of hearing Claimant was a 42-year-old man whose date of birth was [REDACTED]. Claimant was 64" tall and weighed 210 pounds. Claimant has a high school diploma.
- (7) Claimant has worked as a machine operator and on the assembly line.
- (8) Claimant alleges as disabling impairments: Lower back pain.

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 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 is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a psychological evaluation dated August 16, 2010 states that Claimant was in contact with reality. He was cooperative, polite, and open. He appeared somewhat despondent and may have a tendency to minimize symptoms of depression. He admits that in the past his self-esteem was a 7 or 8 on a scale from 1 to 10 and states, "I could do everything back then." He rates his current self-esteem as a 1 or 2 and adds, "I'm just in so much pain all of the time. It's hard to feel good." The patient was oriented, alert, and generally spontaneous. His speech was clear, coherent, and fluent. His responses, although sparsely detailed, were relevant, logical and connected. The patient denied

hallucination, delusions, obsessions, feelings of persecution, paranoia, blackouts, or homicidal ideation. He admits that he may feel hopeless and worthless at times. He admits to one suicide attempt in 1996 but stated he was angry and going through a divorce. He is somatically preoccupied with chronic pain and sleep disturbance. His affect was sad and slightly anxious. He was oriented to person, place and time. He could remember 6 digits forward and 2 backward, he was able to recall 3 of 3 objects after a 3 minute delay. He identified the current and previous president and gave the name of Clinton and Bush. He gave his date of birth as October 6, 1968. He state 5 large cities were Detroit, Cincinnati, Los Angeles, San Francisco, and New York. Famous people are Obama, Mrs. Clinton, Joe Namath, Labron James, and Michael Jordon. For events is the war in Afghanistan. In calculation he was not able to subtract 7's from 100. He stated $5 \times 5 = 25$, $18 / 6 = 3$, $12 + 9 = 22$, and $11 - 3 = 8$. He stated that The grass is always greener on the other side means that the grass is green and don't cry over spilled milk means don't cry. He stated that a bush and a tree are alike and are living plants and they are different that the tree grows up and the bush is small. The apple and orange are alike in that they are both round and small, and they are different colors. In judgment: if he found a self addressed envelope on the ground he would mail it. If he saw a fire in a theatre he would walk up to the personnel area and tell somebody in charge. His future plans are to get help to see what's wrong with him. He was diagnosed with Depressive Disorder NOS and a Global Assessment of Functioning 56. He would be able to manage his own benefit funds and the potential for him become gainfully employed in a simple, unskilled work situation on a sustained and competitive basis is guarded pending psychiatric treatment for symptoms of anxiety and depression. (Pgs. A1-A4)

A physical capacity assessment indicates that the Claimant can sometimes sit, walk and stand between 2 and 6 hours in an 8 hour work day and he can lift up to 10 pounds sometimes, but never lift 25 pounds or more. (Pg. 35)

The patient record dated April 19, 2010 indicates that Claimant's chief complaint was lower back pain and his pulse 72, respiration 16, blood pressure 114/72, height 6'4" tall, weighed 258 pounds. His heart had regular rate and rhythm. Normal S1 – S2, no murmur noted, no carotid bruits, auscultated. No murmur noted with the Valsalva maneuver. PMI at the 5th intercoastal space. The lungs were clear to auscultation in all fields. No wheezing, rhonchi, or rales or tactile fremitus. The abdomen: bowel sounds were present and active in all four quadrants. No palpable hepatomegaly, splenomegaly or masses noted. No audible bruits. No rebound tenderness. Negative Lloyd's sign bilaterally. No pain of palpation. HEENT: Tympanic membranes intact with normal glistening cones of light. Oral mucosa pink and moist. No evidence of erythema or exudate. Uvula in midline. No palpable lymphadenopathy. Neck was supple with full range of motion. PERLLA bilaterally. Funduscopic exam reveals no AV nicking or papilledema. EOMI bilaterally without nystagmus. In the extremities: deep tendon reflexes were +2/4 and equal bilaterally at the biceps, triceps, brachioradialis, patella and achilles. Pulses intact bilaterally at the carotid, radial, ulnar, Dorsal pedis, and posterior tibial arteries. Muscle strength +5/5 and equal bilaterally at the extensor hallucis longus, plantar/dorsi flexion of the feet, knee flexion/extension, AB/adduction of

the legs, hip flexion, intrinsic muscles of the hands, wrist flexion/extension, biceps, triceps, shoulder front raise, lateral raise, and drop can testing. No evidence of scoliosis. Negative straight leg raise at 90 degrees bilaterally. The skin and no evidence of suspicious lesions or rash. The patient was alert and interactive with a pleasant affect. Cranial nerve II-XII intact and functioning. The assessment was L4-L5 disc left foraminal bulge. (Pg 86 and 87)

At Step 2, claimant has the burden of proof of establishing that she 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 the following disabling mental impairments: depression and anxiety.

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 *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.

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 42), with a 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

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/or State Disability Assistance.

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 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/

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

Date Signed: November 16, 2011

Date Mailed: November 18, 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.

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