STATE OF MICHIGAN STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES ADMINISTRATIVE HEARINGS FOR THE DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 2011-2770 Issue No: 2009; 4031

Case No:

Hearing Date:

December 15, 2010 Saginaw County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

HEARING DECISION

This matter is before the undersigned Admini strative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notic e, a telephone hearing was held on December 15, 2010. Claimant personally appeared and testified.

<u>ISSUE</u>

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P), retroactive Medical Assistance (retro 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 14, 2010, claimant filed an application for Medical As sistance, retroactive Medical Assistance and St ate Disability Assistance benefits alleging disability.
- (2) On Augus t 11, 2010, the Medi cal Rev iew Team denied c laimant's application stating that claimant could perform prior work.
- (3) On August 18, 2010, the department ca seworker sent claimant notice that his application was denied.
- (4) On October 12, 2010, claimant fil ed a request for a hearing to contest the department's negative action.
- (5) On October 28, 2010, the State Hearing Review T eam again denie d claimant's application stat ing in its' analys is and rec ommendation: the

claimant injured his back in 2005 and continued to have back pain. In May 2010 he underwent lumbar fusion. His condition was improving. The medical evidence of record indicates that the claimant's condition is improving or is expected to improve within 12 m onths from the date of onset or from the date of surgery. Therefore, MA-P is denied due to lack of duration under CFR 416.909. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 as the impairments would not preclude all work for 90 days.

- (6) The hearing was held on December 15, 2010. At the hearing, claimant waived the time periods and request ed to submit additional medical information.
- (7) Additional medical information wa s submitted and sent to the State Hearing Review Team on December 16, 2010.
- (8) On January 3, 2011, the State Hearing Review Team again denied claimant's application st ating in its' analy sis and recommendation: the claimant injured his back in 2005 and continues to have back pain. In May 2010 he underwent lumbar fusion. He reported his condition was improving only the first 3 months follo wing his surgery. In N 2010, he was distraught and distressed over his continued symptoms. He had been on pain killers over the pas t 5-6 years and had appar ently run out of these medications. However, his gait and stat ion were normal and straight leg raise was negative. Deep tendon reflexes were 1at the knees and ankles. The claimant's impairment s do not meet /equal the intent or ting. The medical evidenc e of record severity of a Social Security lis indicates that the claimant retains the capacity to perform a wide range of sedentary work. In lieu of det ailed work history, the cla imant will be based on the claimant's vocationa I returned to other work. Therefore, profile of a younger indiv idual, 12 th grade education and a history of unskilled and semi-skilled work, MA-P is denied using Vocational Rule 201.27 as a guide. Retroactive MA-P wa s considered in this cas e and is also denied. SDA is denied per PEM 261 because the nature and severity of the claimant's impai rments would not preclude work activity at the above stated level for 90 days.
- (9) Claimant is a 30-year-old man w hose birth date is Claimant is 6'2" tall and weighs 240 pounds. Claimant is a high school graduate and has 20 college credits in general studies. Claimant is able to read and write and does have basic math skills.
- (10) Claimant last worked Februar y 28, 2006, as a Senior Servic e representative making bolts for c ars. Claimant also worked for the mall in sales and stocking and for and sandwich maker.

(11) Claimant alleges as disabling im pairments: low back injury, back surgery May 26, 2010, when he had t wo discs removed and a disc ectomy, problems with urination, and back pain as well as weakness in his knees.

CONCLUSIONS OF LAW

The State Disability A ssistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Service s (DHS or department) admin isters the SDA program pursuant to MCL 400.10, et seq., and MAC R 400.3151-400.3180. Department polic ies 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 estab lished by Title XIX of the Social Sec urity Act and is implemented by Title 42 of the C ode 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 substant ial 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 deter mine disability. Current work activity, severity of impairments, residual functional capacity, past wor k, 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 experienc e. 20 CFR 416.920(c).

If the impairment or combination of impair ments do not signific antly limit physica I 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 press ure, X-rays);
- (4) Diagnosis (statement of disease or injury based on it s 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 with out 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 a cceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an indiv idual 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 decis ion about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other ev idence 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 regula tions require that s everal considerations be analyzed in s equential order. If disability can be ruled out at any step, analys is of the next step is <u>not</u> required. These steps are:

- 1. Does the client perf orm S ubstantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
- 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 cli ent is ineligible for MA. If yes, the analysis c ontinues to Step 3. 20 CF R 416.920(c).
- 3. Does the impairment appear on a spec ial listing of impairments or are the cli ent's symptoms, signs, and laboratory findings at least eq uivalent in s everity to the set of medical findings specified for the listed impairment? If no, the analys is 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 t he 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 subs tantial gainful activity and has not worked since 2006. Claimant is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence on the record indicates that claimant testified that he was receiving workers compensation until 2006 and then he was fired. Claimant testified that he lives with his father and his fat her supports him and he is single with no children under 18 and he has no income. Claimant testified that he does receive Food Assistance Program benefits. Claimant testified that he does have a drivers' license and drives to a doctors appointment and usually drives 1 time every 2-3 weeks. Claimant testified that he does cook very little and his mom usually does it, but when he does cook, he cooks, chicken ham burger and sandwiches. Claimant testified that his mother grocery shops and he us ually picks up and does the dis hes, or picks up his clothing and does paperwor k in the form of hous ehold chores. Claim ant testified that he has cut the grass a couple times and he plays chess as a hobby. Claiman t testified that he watches TV 4-6 hours per day. Claim ant testified that he can stand for 20 minutes at a time, sit for 15-20 minut es at a time and c an walk 5- 10 minutes. Claimant testified that he canno t squat because it is painful but he can bend a little a t the waist. Claimant testified that he is able to shower and dress himself, but not tie his shoes or touch his toes and his level of pain on a scale from 1-10 without medication is a 10 and with medication is an 8. Claim ant testified that he is right handed and hi s hands and arms are fine. Claimant testified that he has shooting pa in in his right leg and numbness and weakness. Claim ant testified that the heav jest weight that he can carry is a gallon of milk. Claimant testified that he does smoke 1 cigar per week and his doctors told him to guit but he is not in a smoking cessation program. Claimant testified that in a typical day he lies in bed on t he ice and he goes to doct or's appointments, takes a hot shower and goes to church for 30 minutes on Sundays.

The claimant sustained a back injury in July 2005 (p. 93). An EMG in March 2010, showed bilateral L5 radiculapothy, mild with denervation super imposed with peripheral polyneuropathy. A n MR I of the lumbar spine in March 2010, showed L2-L3 degenerative disc disease, L3-L4 disc bulge and L5-S1 bilateral f acet arthropathy and broad based annular tear (p. 91).

In May 2010, the claimant underwent L4- L5 and L5-S1 fusion. In June 2010, his surgical incision was well hea led. SL straig ht leg rais ing was negat ive. Strength was 5/5 (p. 82).

In July 2010, the claimant's strength was 5/5. Bilate ral patellar and Ac hilles deep tendon reflexes were absent. He was able to walk on his heels and t oes without

difficulty. He had mild tenderness to palpati on of the right sacroilia lac joint. CT scan showed he was progressing well (Records from DDS).

In August 2010, the claimant had negative straight leg raise. He did have bilateral hamstring tightness. Bilateral anterior and pos terior tibialis, per onei and gastrocnemii strength was 5/5. Bilateral patellar and Achilles deep tendon reflexes were absent. He was 3 months post-op and had resolution of t he majority of his lower bac k pain. In November 2010, the claimant acknowledged that he had be en receiving Vicodin or other pain killers unint erruptedly over the past 5-6 year s. He was distraught and quite distressed with his continued symptoms. His last refill had expired over the past 7 days ons except Ibuprof en and Tylenol. He and he had not received any pain medicati reported severe bac k pain with bilateral leg symptoms. His gait and station wer e normal. Straight leg raise was negative to 90 degrees. Deep tendon reflexes were 1 at knees and ankles. MRI showed good position of the bilateral facet screws (SHRT, January 3, 2011).

burden of proof of establis hing that he has a severely At Step 2, claimant has the 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. in multiple areas of his Claimant has reports of pain body; however, there are no corresponding clinic al findings that suppor t the reports of symptoms and limitations made by the claimant. There are no labor atory or x-ray findings listed in the file. The clinical impression is that claimant is stable. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, claimant has restricted himself from tasks associated with occupational functioning based upon his reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that claimant has met the evidentiary burden of proof can be made. This Administrative Law Judge finds that the medical record is insu fficient to establish that claim ant 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/ps ychiatric evidence in the record indicating claimant s uffers severe mental limitations. There is no ment all residual functional capacity assessment in the record. There is in sufficient 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 or iented to time, person and place during the

hearing. Claimant was able to answer all of the questi ons at the hearing and was responsive to the questions. The evidentiar y record is insufficient to find that claimant suffers a severely restrictive mental impair ment. 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 thi s 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 hi s 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 sequentia 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 capac ity is what an individual can do desp ite 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 class ify 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 t han 10 pounds at a time and occasionally lifting or carrying articles lik e 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 wor k 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 categor y 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 objecti ve 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 pr ovide 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 mont hs. 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/ps ychiatric 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 30), with a more than high school education and an unskilled work his story 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's Program Elig ibility Manual contains the following policy statements and instructions for casework ers regarding the State Disability Assistance program: to receive State Disability Assist ance, a person must be disabled, caring for a disable diperson or age 65 or older. BEM I, 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 Stat e 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 conclusion sof 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.

		<u>/s/</u>
Landis		Y. Lain
		Administrative Law Judge
		for Maura D. Corrigan, Director
		Department of Human Services
Date Signed:	March 1, 2011	
Date Mailed:	March 2, 2011	

NOTICE: Administrative Hearings may or der 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 Hear ings will not orde rarehearing 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 ti mely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

LYL/alc

