

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 20113752
Issue No: 2009

[REDACTED]
[REDACTED]
Jackson County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

AMENDED 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 February 1, 2011. Claimant was represented at the hearing by L&S Associates, Inc. On June 24, 2011, Administrative Law Judge [REDACTED] issued a Decision and Order stating that claimant met the standards for medical disability as of February 2011. On June 29, 2011, L and S Associates notified [REDACTED] that on June 1, 2011 claimant received a fully favorable decision from the Social Security Administration (SSA) with a disability onset date of April 29, 2010. The June 24, 2011 Decision and Order are hereby vacated and the Amended Hearing Decision is hereby issued.

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 June 8, 2010, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.
2. On June 23, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work.
3. On July 13, 2010, the department caseworker sent claimant notice that his application was denied.

4. On October 8, 2010, claimant filed a request for a hearing to contest the department's negative action.
5. On November 18, 2010, the State Hearing Review Team again denied claimant's application stating that claimant stating in its analysis and recommended decision: the medical in the file does not diagnosis or mention any treatment for skin cancer or borderline diabetes. 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 a wide range of light work. 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 work. Therefore, based upon the claimant's vocational profile of a younger individual, 12th grade education, and semi-skilled work history, MA-P is denied using Vocational Rule 202.21 as a guide. Retroactive MA-P was considered in this case and is also denied.
6. The hearing was held on February 1, 2011. At the hearing, claimant waived the time periods and requested to submit additional medical information.
7. Additional medical information was submitted and sent to the State Hearing Review Team on May 3, 2011.
8. On May 11, 2011, the State Hearing Review Team approved claimant for Medical Assistance benefits effective February 2011 as it equaled to Listing 4.02B. The information in the file shows that prior to February 2011 the claimant's ejection fraction was actually within normal limits in December 2010 and 44% in April 2010. The information in the file indicates that the claimant is capable of light work prior to the MRT approval in February 2011. The claimant's impairments did not meet/equal the intent or severity of a Social Security listing prior to the Medical Review Team approval in February 2011. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of light work prior to the MRT approval in February 2011. Therefore, based on the claimant's vocational profile of a younger individual, 12th grade education, and history of unskilled and semi-skilled work, MA-P/retro MA-P is denied to the MRT approval in February 2011 using Vocational Rule 202.20 as a guide.
9. On the date of hearing claimant was a [REDACTED] man whose birth date is [REDACTED]. Claimant was 6' 3" tall and weighs 235 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills. Claimant testified that he was in Special Education for Reading, English and Math when he was in school.

10. Claimant last worked May 2010 junking metal. Claimant has also worked as a laborer at Good Will and as a machine operator in a factory and doing roofing.
11. Claimant alleges as disabling impairments: recurrent skin cancer on his face, shortness of breath, borderline diabetes, coronary artery disease, atrial fibrillation, hypertension, and cut tendons in the left hand. Claimant alleges no mental impairments.

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 not engaged in substantial gainful activity and has not worked since May 2010. Claimant is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence on the record indicates that claimant testified on the record that he lives in a house with his son and his son pays the rent and supports him. Claimant is single with no children under 18 who live with him and he has no income and receives no benefits from the Department of Human Services. Claimant testified that he does have a driver's license and he drives one time per month but normally his son or a neighbor takes him where he needs to go. Claimant testified that he does cook one time per month and usually cooks easy things like soup, toast and eggs. Claimant does not grocery shop. Claimant does pick up after himself and watches television 3-5 hours per day. Claimant testified that he can stand for an hour and can sit for a few hours and can walk a ½ a mile. Claimant is able to squat, bend at the waist, shower and dress himself and tie his shoes, but not touch his toes. Claimant testified that he had right knee surgery in 1998 so he does have some pain in his knee but his back is fine but it hurts from roofing. Claimant testified that he is right handed and had reconstructive surgery on the right hand 30 years because he cut an artery. Claimant testified that he does have some problems with his hands but his legs and feet are fine. Claimant testified that the heaviest weight he can carry is a gallon of milk and he doesn't smoke, drink, or take any drugs. Claimant testified that he smoked marijuana in high school. Claimant testified that he has a 3-year-old that he watches sometimes and that in a typical day he showers, eats breakfast, looks for work and picks up what he can.

The State Hearing Review Team has approved claimant from February 2011 forward based upon the Medical Review Team's approval. Therefore, all medical records from February 2011 forward are not considered when making this decision. It is not necessary for this Administrative Law Judge to discuss the issue of disability for February 2011 forward. This Administrative Law Judge will discuss the issue of disability for the application period of June 8, 2010 Medical Assistance application and retroactive Medical Assistance application dates of May, April and March 2010.

The objective medical evidence on the record contained in the file indicates that on May 4, 2010 claimant was discharged with left hand cellulites/tenosynovitis, status post incision and drainage, uncontrolled hypertension and underlying coronary artery disease. The echocardiogram showed mild left ventricular hypertrophy with normal left ventricular function with ejection fraction of 55-60%. Trace mitral regurgitation, trivial to mild aortic regurgitation, trace tricuspid regurgitation with mild pulmonary hypertension. Nuclear stress test on April 30, 2010 showed no evidence of stress induced myocardial ischemia. There is a small fixed perfusion defect involving the apical inferior wall of the left ventricle consider with old infarct. X-ray of the left hand was negative. Irrigation and debridement of left fourth finger flexor tendon sheath and proximal sheath palm performed. (p. 17)

On physical examination on April 29, 2010 claimant had a blood pressure of 85/48 on admission and it rose to 154/88. He was saturated on room air of 100%. Pulse was 50 on arrival and it was 79. Claimant's respiratory rate was 20. Temperature was 97.6. Claimant was in no acute distress. He was resting comfortably. The HEENT revealed poor dentition, moist mucous membranes, and oropharynx is without erythema. Pupils are equal and reactive to light and accommodation. Extraocular motion is intact. The neck is supple. No JVD. No cervical lymphadenopathy is appreciated. The heart revealed an irregular rate without appreciable murmur. The lungs were clear to auscultation bilaterally without appreciable wheeze, rales or rhonchi. The abdomen was soft, thin and non-tender. No guarding or rebounding. Extremities revealed left ring finger laceration. Neurologically the claimant was alert and oriented to person, place and situation. Cranial nerves II-XII were grossly intact. He answered questions appropriately but had poor insight due to his health status. He was noncompliant with medicine and it was stressed to him that he needed to be complaint with his medical regimen. (pgs. 12-13)

Because of the Social Security Administration determination, it is not necessary for the Administrative Law Judge to discuss the issue of disability. BEM, Item 260, page 1

A person eligible for Retirement, Survivors and Disability Insurance (RSDI) benefits based on his disability or blindness meets the disability or blindness criteria. Disability or blindness starts from the RSDI disability onset date established by the Social Security Administration (SSA). This includes a person whose entire RSDI benefit is being withheld for recoupment. No other evidence is required. BEM, Item 260, page 1

Process a previously denied application as if it is a pending application when all of the following are true:

- The reason for denial was that the MRT/SRT determined the client was **not** disabled or blind, **and**
- **The Social Security Administration (SSA) subsequently determined that the client is entitled to RSDI based on his disability/ blindness for some or all of the time covered by the denied MA application.**

Follow MA policies including verification of income, assets and receipt of RSDI based on disability/blindness. All eligibility factors must be met for each month MA is authorized. If more than one MA denial notice was issued prior to the date the client informs DHS of the RSDI approval, determine eligibility beginning with the oldest application and its retro MA months. PEM, Item 260, pages 1-2.

AMENDED DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that in light of the Social Security Administration's June 1, 2011 determination that claimant meets the definition of medically disabled under the Medical Assistance program as of the June 8, 2010 application date and also for purposes of the Retroactive Medical assistance application for the months of May and April 2010.

Accordingly, the department's decision is REVERSED. The department is ORDERED to initiate a review of the June 8, 2010 application and retroactive application for Medical Assistance to determine if all other non-medical eligibility criteria are met. The department shall conduct a medical review in July 2012.

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

Date Signed: 6/29/11

Date Mailed: 6/29/11

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/ds

■ [REDACTED]