

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

IN THE MATTER OF:



Reg. No: 2011-14148
Issue No: 2009
Case No: [REDACTED]
Hearing Date: April 13, 2011
Huron County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain for Jay Sexton

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 13, 2011. Claimant personally appeared and testified.

This hearing was originally held by Administrative Law Judge Jay Sexton. Jay 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 October 8, 2010, claimant filed an application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On January 5, 2011, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical Vocational Rule 202.15.
- (3) On January 5, 2011, the department caseworker sent claimant notice that his application was denied.

- (4) On January 19, 2011, claimant filed a request for a hearing to contest the department's negative action.
- (5) On February 4, 2011, the State Hearing Review Team again denied claimant's application stating in its' analysis and recommendation: the claimant was diagnosed with adenocarcinoma of the prostate in January 2010 and he underwent a radical prostatectomy in February 2010. He has a history of chronic fatigue with a basically unremarkable physical examination. The claimant's impairment's 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. He has a history of working as a Nurse. The general duty nurse job is typically performed at the medium exertional level. Therefore, based on the claimant's vocational profile of closely approaching advanced age at [REDACTED] a Bachelor's Degree and a history of skilled work, MA-P is denied using Medical Vocational Rule 202.14 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 impairment's would not preclude work activity at the above stated level for 90 days.
- (6) On the date of hearing claimant was a 52-year-old man whose birth date is [REDACTED]. Claimant has a Bachelor's Degree and is a licensed [REDACTED].
- (7) Claimant last worked as a [REDACTED].
- (8) Claimant alleges as disabling impairments: prostate cancer and chronic fatigue syndrome as well as shortness of breath, bladder incontinence, diabetes and depression.

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 is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a medical examination report dated [REDACTED] indicates that claimant was 5'8" tall and weighed 248 pounds. His blood pressure was 144/70 and he was left hand dominant. Visual acuity was 20/20 in the right eye best corrected and 20/25 in the left eye best corrected. The clinical impression is that claimant was stable (pp. 21-22)

A neurology examination dated [REDACTED] indicates that claimant revealed a well nourished white male in no apparent distress. Blood pressure was 154/91, pulse 109, weight 266. Neck was supple without masses, tenderness or bruits. Back without spasm or tenderness. Extremity examination reveals normal appearing feet. The

claimant was alert and oriented to person, place, time and situation. Memory was intact, recent and remote events. The claimant's attention span was and concentration seemed appropriate. The claimant had fluent speech without errors and naming. The claimant's fund of knowledge and vocabulary were normal. Pupils were equal, round and reactive to light in accommodation. Visual fields were full. Fundi showed a pale right disc. No vessel changes noted. Extraocular movements were intact in all directions. Facial sensation was intact to light touch, pin prick and temperature. Corneal reflexes were 2+ and equal. Jaw tone and strength are good. Muscles of facial expression are symmetric. Hearing was intact to finger rub. Uvula was midline. Gag was present. Sternocleidomastoid and trapezial strength were 5/ bilaterally. Tongue was midline. Motor examination showed strength to be 5/5 in all 4 extremities with normal tone and bulk. No fasciculations, grip or percussion, myotonia noted. Barre was negative. Sensory examination was intact to pin prick, light touch, temperature and vibration sense. Position sense is normal. Cerebellar examination: finger to nose, heel to shin, and rapid alternating movements are normal. Gait and station are normal. Claimant is able to tandem walk without difficulty. Romberg was negative. Reflexes were 2+ and equal in all 4 extremities. Toes are down going. No frontal release signs are elicited (p. 97).

A [REDACTED] neurology follow-up indicates that claimant was assessed with chronic fatigue syndrome and headaches (p. 95).

A [REDACTED] medical examination indicates that claimant was cooperative in answering questions and following commands. The claimant's immediate, recent and remote memory is intact with normal concentration. The claimant's insight and judgment are both appropriate. The claimant provides a good effort during the examination. He had a depressed affect. The blood pressure on the left arm was 130/80, weight is 242 pounds, and height is 68" without shoes. The skin was normal. Eyes and ears: the visual acuity in the right eye is 20/25 and the left eye is 20/50 with corrective lenses. There is a left immature cataract. Pupils are equal, round and reactive to light. The claimant could hear conversational speech without limitations or aides. The neck was supple without masses. In the chest, breath sounds are clear to auscultation but with diminished air entry. There is no accessory muscle use. In the heart there is regular rate and rhythm without enlargement. There is a normal S1 and S2. In the abdomen there is no organomegaly or masses. Bowel sounds are normal. The abdomen is obese. In the vascular area there is no clubbing or cyanosis detected. There is trace pitting edema appreciated. The peripheral pulses are intact. In the musculoskeletal area there is no evidence of joint laxity, crepitance, or effusion. Grip strength remains intact. Dexterity is unimpaired. The claimant can tie laces, button clothing and open a door. The claimant had no difficulty getting on and off the examination table, no difficulty heel and toe walking, no difficulty squatting, mild difficulty hopping. Straight leg raising is negative. There is no perivertebral muscle spasm. Range of motion studies was normal. In the neurological area, cranial nerves are intact. Motor strength and tone are normal. Sensory is intact to light touch and pin prick. Reflexes are 2+ and symmetrical. Romberg testing is negative. The claimant walks with a wide based gait without the use of an assist device.

The conclusion is diabetes with sugars remaining poorly controlled possibly due to non-compliance. He also has shortness of breath and did have some findings of restrictive lung disease and does use a C-PAP for sleep apnea (pp. 14-18).

An EMG in [REDACTED] was normal. A spinal fluid examination was normal but he had a minimally elevated CSF pressure of 220 cm water (p. 95). In [REDACTED] the claimant was seen for multiple symptoms which began with shortness with breath. He had myalgias in all muscle groups and a tremor and fatigue (p. 96). His examination was unremarkable (p. 97).

The claimant was diagnosed with adenocarcinoma of the prostate in [REDACTED]. His PSA was 4.6 (p. 101). In [REDACTED] he underwent a radical prostatectomy (p. 143). The lymph nodes showed no evidence of malignancy (p. 141).

In [REDACTED] the claimant was 68" tall and 242 pounds. Breath sounds were clear to auscultation but with diminished air entry. Grip strength and dexterity were intact (p. 15). Motor strength and tone were normal. Sensory functions were intact. Reflexes were 2+ and symmetrical. He walked with a wide based gait without the use of an assist device (p. 17). His diabetes is poorly controlled (p. 18).

In [REDACTED] the claimant was 5'8" tall and weighed 248 pounds (p. 21). His examination was within normal limits (p. 22).

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 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 person who is closely approaching advanced age (age 52), with a Bachelor's Degree and a skilled work history who is limited to light work is not considered disabled pursuant to Medical Vocational Rule 202.14.

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 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

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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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