

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

IN THE MATTER OF:



Reg. No: 2011-1834
Issue No: [REDACTED]
Case No: 2009
Hearing Date:
January 27, 2011
Macomb County DHS (12)

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain for Jay W. 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 January 27, 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), 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 June 22, 2010, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On August 20, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical Vocational Rule 202.14
- (3) On August 25, 2010, the department caseworker sent claimant notice that his application was denied.

- (4) On September 15, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (5) On October 28, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the objective medical evidence presented does not establish a disability at the listing or equivalence level. In following the sequential evaluation process, the claimant is not engaged in substantial gainful activity. The claimant's impairment's do not meet/equal the intent of a Social Security listing. The objective medical evidence presented does not establish a disability at the listing or equivalence level. The claimant retains the capacity to perform all work. Therefore, MA-P is denied per 20 CFR 416.920(c) as non-severe. Retroactive MA-P was reviewed and denied. SDA is denied per PEM 261.
- (6) Claimant filed a second hearing request on November 19, 2010.
- (7) On the date of hearing claimant was a 54-year-old man whose birth date is [REDACTED]. Claimant is 5'9" tall and weighed 175 pounds. Claimant is a high school graduate.
- (8) Claimant last worked as a butcher or meat cutter for 25 years.
- (9) Claimant alleges as disabling impairments: heart disease and carpal tunnel syndrome, as well as osteoarthritis, degenerative disc disease, low back pain, knee pain and hand 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 an [REDACTED] lumbar spine x-ray shows no acute changes and multilevel degenerative disc disease which is most pronounced at L5-S1. There is moderated degenerative disc space disease at L5-S1 with associated endplate changes. Very mild disc space narrowing with associated endplates spurting is noted at L2-L3, L3-L4, and L4-L5. No significant

facet arthritis, spondylosis or spondylo listhesis was seen in the sacroiliac joints were patent (p. 30).

A [REDACTED] internal medicine examination indicates that claimant smokes one pack of cigarettes per day but denied drinking alcohol or doing drugs. His eyes, he had no ptosis, exophthalmos, lesions, redness or discharge. PERRLA. Extra ocular movements full. Fundi showed no AV nicking, hemorrhages or exudates. The ears had no redness, drainage in external auditory canal. Tympanic membrane did not reveal bulging or discoloration. In the nose there was no swelling, redness, drainage or deformity. In the throat, there were no ulcers, no white patches or pharyngeal inflammation. In the neck, no asymmetry, tenderness, masses, cervical lymphadenopathy. Thyroid is not palpable. JVP is flat. No carotid bruits. In the chest, there was no sign of respiratory distress or use of accessory muscles of inspiration. Symmetrical. No increase of AP diameter. Normal to percussion. In the heart PMI is in the 5th intercostal space, left mid clavicular line. Normal S1-S2. No murmur or gallop. In the lungs equal sounds on both sides. No crackles or wheezes. In the abdomen, normal active bowel sounds. Tympanitic. Lymph, spleen and kidneys not enlarged. No tenderness or masses. In the back there was no kyphosis or scoliosis. No paravertebral spasm or point tenderness. Straight leg raising is negative. In the extremities, there was no asymmetry or atrophy. No edema, cyanosis or clubbing of the fingers. Radial, posterior tibial and dorsalis pedis pulses are palpable. Capillary refill is 2-3 seconds. In the neurologic area, general indication was alert, awake and oriented to person, place and time. Cranial nerve II, vision as stated in vital signs. 3, 4 and 6 no ptosis, nystagmus. PERRLA. EOM full. Pupils 2 millimeters bilaterally. 5 muscle strength and position sensation on both sides of the face are equal. 7, symmetrical facial movements noted. 8, can hear normal conversation and whispered voice. Weber's test sound coming from the midline. Rinne's test – air conduction is greater than bone conduction. 9 and 10, swallowing intact. Gag reflex intact. Uvula midline. 11, head and shoulder movement, I guess resistance are equal. 12, no sign of tongue atrophy. No deviation with protrusion of tongue. Sensory was intact to pin and dull stimuli. He was ambulatory with a stable gait. He could toe, heel and tandem walk. No flaccidity, spasticity or paralysis. Cerellar – finger to finger, finger to nose and Romberg are negative. The impression was lower back pain, bi-lateral carpal tunnel syndrome and hypertension. The medical source statement revealed that the claimant came in ambulatory with a stable gait. He does not use a walking aide. He was able to walk on his toes and heels. The back has no paravertebral spasm or point tenderness. He claimed pain in the lower back with straight leg raising at 90 degrees bilaterally. He had difficulty getting on and off the examination table. While standing he was able to bend down completely to touch the floor. Other range of motion was full. He also has bilateral carpal tunnel syndrome. There is no swelling of the wrist or fingers. They all have full range of movement. Tinel's and Phalen's test were both negative. He also has high blood pressure. Currently, the blood pressure is well controlled. He has no angina or sign of congestive heart failure. There is no heart murmur, gallop, pulmonary rales, biceromegaly or leg edema (p. 43).

Vital signs; claimant was 5'8" tall; weighed 185 pounds; pulse was 85; respirations 16; blood pressure was 104-66, 96/64 and 90/ 68. His uncorrected vision on the right was 20/60 and on the left 20/50 and his Jamar strength on the right was 32 kilograms and on the left 36 kilograms (p. 38).

A psychiatric evaluation dated [REDACTED] indicates that the claimant had good contact with reality. His insight was fair. The claimant was relaxed. The claimant had decreased motivation. The claimant had low self-esteem. The claimant had a tendency to minimize symptoms. The claimant has decreased eye contact. Gait was slow with a limp. He was 5'8" tall and weighed 185 pounds. He was adequately dressed and groomed. His stream of mental activity was spontaneous, circumstantial, but organized with no pressure of speech. The claimant denied any hallucinations or paranoia. No suicidal ideation, plan or attempts. The claimant has a snappy and frustrated mood but no mood swings appreciated. No gross delusions. Sleep is tossing and turning 4-5 hours. Somatic complaints, back pain and headaches. The emotional reaction was depressed anxious and friendly. The claimant's affect was blunt. The claimant was alert and oriented to time, person and place. The claimant was able to recall 2 digits out of 5 forwards and 2 out of 5 backwards immediately. The claimant was able to recall 2 out of 3 objects after a few minutes. When asked to name the past few presidents he stated Obama, Kennedy, Nixon and Lincoln. The claimant knew his birth date. When asked to name 5 large cities, the claimant stated Detroit, Chicago and Miami. He was able to name famous people. His calculations were $5+4=9$ and $6*7=42$. When asked to interpret the proverb the grass is greener on the other side of the fence, the claimant stated "I don't know". When asked to interpret the proverb don't cry over spilled milk, he stated "something happened, don't worry you cannot change it". When asked about the similarities and difference between a tree and a bush, the claimant stated that both are green. He did not know the difference (p. 36). When asked what the claimant would do if he found a stamped addressed envelope, the claimant said "put it in the mailbox". He had no head injury or seizures. He was diagnosed with major depressive disorder, single episode untreated, hypertension, knee pain, arthritis, lower back pain and an axis 5 GAF of 55. His prognosis was fair and he would not be able to handle his own benefit funds (p. 33).

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.

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.

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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