

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2010-12570
Issue No: 2009/4031
Case No: [REDACTED]
Hearing Date: February 2, 2010
Genesee County DHS-06

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 February 2, 2010. Claimant personally appeared and testified.

This hearing was originally held by Administrative Law [REDACTED] 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 [REDACTED] 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 June 22, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
2. On August 12, 2009, the Medical Review Team denied claimant's application stating that claimant's impairments lack duration.
3. On July 18, 2009, the department caseworker sent claimant notice that his application was denied.
4. On September 15, 2009, claimant filed a request for a hearing to contest the department's negative action.

5. On December 29, 2009, the State Hearing Review Team again denied claimant's application stating that it had insufficient evidence and requested an Independent Physical examination.
6. The hearing was held on February 2, 2010. At the hearing, claimant waived the time periods and requested to submit additional medical information.
7. On the date of hearing, claimant is a 55-year-old man whose birth date is [REDACTED]. Claimant was 5' 8" tall and weighed 170 pounds. Claimant completed high school and attended [REDACTED] for 2 years and received certification for Truck Driving.
8. Claimant has worked as a Truck Driver, long haul truck driver, and claimant also worked as a Transportation Discharger.
9. Claimant alleges as disabling impairments: Prostrate cancer, diabetes mellitis, kidney problems and high cholesterol.

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 Claimant is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence on the record indicates that a residual functional capacity assessment dated July 8, 2009, indicates that claimant could occasionally carry 50 lbs, frequently lift 25 lbs, and stand about 6 hours in an 8 hour workday, and sit about 6 hours in an 8 hour workday, and he could push and pull in an unlimited fashion. In August 2008, claimant was diagnosed with prostate cancer and bone scan and CT scan were negative for metastasis. Impression is prostate cancer status post bilateral, lymphadenectomy, radical retropubic, prostatectomy, non insulin dependent DM, and high cholesterol. A May 22, 2009 CT scan show that lacre was a small window after placing the perinephric drain his leukocystosis resolved. A rhino scan connected June 29, 2009 did suggest poor function of the right pelvic kidney, certainly less than 20%. Claimant could frequently climb stairs, balance, stoop, kneel, crouch and crawl but should only occasionally do ladder rope and scaffolds. Claimant had no visual limitations, no communicative limitations, and no environmental limitations. He had normal venous and arterial Doppler studies of the lower extremities.

(Pages 1-10). On May 1, 2009, medical admission indicates that claimant had a right pelvic kidney demonstrating reduced vascular flow with a large segment, approaching 20% of the kidney being necrotic and containing gas suggestive of renal abscess.

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 or could result in death. There is sufficient objective clinical medical evidence in the record that claimant suffered a severely restrictive physical or mental impairment. Therefore, claimant has not been disqualified from receiving Disability at Step 2.

At Step 3, the medical evidence of claimant's condition does not give rise to a finding that he would need a statutory listing in the code of Federal Regulations.

This Administrative Law Judge at Step 4, finds that claimant can probably not perform his prior work with his impairments.

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 a frame that does not have the 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 sufficient objective medical evidence that he does have the residual functional capacity to perform sedentary tasks if demanded of him but in light of his condition, this Administrative Law Judge finds the claimant does not retain the capabilities to perform a full range of sedentary activities and therefore, is disabled per purposes of Medical Assistance and State Disability Assistance benefits.

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 meet the definition of disabled under the MA-P program and it is established that claimant was unable to work for a period exceeding 90 days.

The Department has not 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 claimant meets the definition of Medically Disabled under the Medical Assistance Program and State Disability Assistance program as of the June 22, 2009 application date.

Accordingly, the department's decision is REVERSED. The department is ORDERED to initiate a review of the June 22, 2009 application if it has not already done, to determine if all other non medical eligibility criteria are met. The department shall inform the claimant of the determination in writing.

The department is ORDERED to conduct a medical review of claimant's eligibility for Medical Assistance and State Disability Assistance benefits in February 2012. At that time the department shall assist the claimant in gathering updated medical information in July 2009 forward.

/s/

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

Date Signed: 1/3/12

Date Mailed: 1/3/12

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]