

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

IN THE MATTER OF:



Reg. No: 20113095
Issue No: 2009
Case No: [REDACTED]
Hearing Date:
January 19, 2011
Ingham County DHS

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, an in-person hearing was held on January 19, 2011. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED]

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 March 25, 2010, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.
- (2) On July 13, 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 20, 2010, [REDACTED] filed a request for a hearing to contest the department's negative action.
- (5) On November 4, 2010, the State Hearing Review Team again denied claimant's application stating in its' analysis and recommendation: the

claimant has diabetes and has a history of CVA and multiple TIA's. He has kidney disease with a creatinine of 2.7 which is below the listing level of 4.0 or greater. He has proliferative diabetic retinopathy with corrective vision within normal limits. He has some neuropathy in his hands and feet. He has some anxiety and worry but his mental status was unremarkable. 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. The claimant's past work as a cashier and general sales person was performed at the light exertional level. Therefore, claimant retains the capacity to perform his past relevant work. MA-P is denied per 20 CFR 416.920(e). Retroactive MA-P was considered in this case and is also denied.

- (6) The hearing was held on January 19, 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 January 19, 2011.
- (8) On February 1, 2011, the State Hearing Review Team again denied claimant's application stating in its' analysis and recommendation: the claimant has a long history of Type I diabetes since age 7. He has microvascular complications of retinopathy, nephropathy and neuropathy. He also has macrovascular complications including TIAs. He has been admitted several times in 2010 with complications. They changed his diabetic program during his recent admissions, but the claimant keeps going back to his old program when he gets home. His creatinine was 4.3 on admission in December 2010 but did improve to 3.4 which does not meet the listing level of 4.0 or greater. He has proliferative diabetic retinopathy with corrected vision within normal limits. He had some neuropathy in his hands and feet. He had some anxiety and worry but his mental status was unremarkable. 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 simple unskilled sedentary work. The claimant's past work was performed at the light exertional level. Therefore, based on the claimant's vocational profile of a younger individual, high school education, and a history of semi-skilled work, MA-P is denied using Vocational Rule 201.28 as a guide. Retroactive MA-P was considered in this case and is also denied.
- (9) Claimant is a 28-year-old man whose birth date is [REDACTED]. Claimant is 6'1" tall and 183 weighs pounds. Claimant is a high school graduate. Claimant is able to read and write and does have basic math

skills. Claimant is currently taking classes at [REDACTED] and he has one semester of class.

- (10) Claimant last worked August 2 010 at [REDACTED] as a cashier and stocking where he worked for 2.5 years. Claimant has also worked at [REDACTED] as a cashier and at [REDACTED] in the layaway.
- (11) Claimant alleges as disabling impairments: chronic renal failure, a stroke, TIA's, congestive heart failure, diabetes mellitus, spots in the eyes, neuropathy, hypertension, hypothyroidism, back pain, foot pain, swelling in the extremities, and the need for dialysis.

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 August 2010. Claimant is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence on the record indicates claimant lives alone in an apartment and his parents support him. Claimant is single with no children under 18 and he has no income and he receives no benefits from the Department of Human Services. Claimant does not have a driver's license and drives 2 times per week and usually drives 5 minutes to his classes. Claimant does not cook everyday and cooks things like chicken and fish and he does grocery shop 2 times per month with no help. Claimant does wash dishes, vacuum, and do laundry. For a hobby, claimant reads, watches TV and does his extra curricular ministering. Claimant stated on the record that he can stand for 25-30 minutes and he can sit for 1 hour. Claimant can walk for 15 minutes, and is able to squat, bend at the waist, shower and dress himself, tie his shoes but not touch his toes. Claimant testified that his back is fine and his knees are fine. Claimant testified that he has neuropathy in his hands and arms and in his legs and feet and the heaviest weight that he can carry is 25 pounds. Claimant testified that he does not smoke, drink or do any drugs. In a typical day he gets up and makes breakfast, goes to class noon-3 and he makes lunch, studies at the university for 3 hours, makes dinner, studies and goes to school activities. Claimant testified that he was hospitalized in March 2010 for a mini stroke for 9 days and he was again in the hospital in September 2010 with kidney complications, and in [REDACTED] with diabetic [REDACTED]. Claimant testified that he cannot take pain medication because of his kidney problems and that he has been told by his doctors that he would need kidney dialysis and he does have some swelling in his extremities. Claimant testified that he's had diabetes mellitus Type I for 21 years and his condition is worsening.

The claimant was admitted in [REDACTED] due to confusion and disorientation most likely related to transient ischemic episodes (TIA) which did resolve. He had a history of CVA with multiple TIA's in the past. He also had acute renal failure and chronic kidney disease, diabetes, and hypertension. His baseline creatinine was 2.5 and went up to

3.6 but was improving at the time of discharge. His renal ultrasound was unremarkable. An echocardiogram revealed a small left to right shunt indicative of patent foramen ovale (pp. 27-310).

In [REDACTED] the claimant's creatinine was 2.7 (p. 23). In [REDACTED] the claimant was 70" tall and weighed 196 pounds. His blood pressure was 140/80. He had good pulses in the distal extremities with no pedal edema. He did have a healing lesion on the dorsal medial aspect of his left great toe. He had normal range of motion of the neck, back and joints tested. He had decreased sensation in the hands and lower extremities but otherwise no acute neurological deficit (p. 5). His vision with his glasses on was 20/40 each eye (p. 7).

In [REDACTED] the claimant has laser photocoagulation for proliferative diabetic retinopathy. His vision in [REDACTED] was 20/25-1 with correction (records from DDS).

A mental status examination dated [REDACTED] showed the claimant drove himself to the appointment. The claimant has recently moved in order to attend college. His stream of mental activity was spontaneous, adequately organized and logical. He denied any hallucinations, delusions, persecutions and obsessions. He was friendly. His speech was articulate. His affect was pleasant. Diagnosis was continuing recurring anxiety/worry of adjustment type (records from DDS).

The claimant was admitted in [REDACTED] due to diabetic complications. His creatinine was 3.5 on admission and 3.0 on [REDACTED] (p. A6). He was diagnosed with diabetic ketoacidosis. He also had anemia, chronic kidney disease, cerebral vascular accident, hypothyroidism, hyperlipidemia, patent foramen ovale (p. A12). The claimant was admitted again in [REDACTED] with typical symptoms of diabetic ketoacidosis. He had acute chronic renal failure. His creatinine was 4.3 but went down to 3.4 before discharge (p. 8-19). The claimant has a long history of Type I diabetes since age 7. He has microvascular complications of retinopathy, nephropathy, and neuropathy. He also has macrovascular complications including TIA's. He has been admitted several times in 2010. They change his diabetic program but the claimant keeps going back to his old program when he gets home (p. A23).

Claimant's impression on [REDACTED] was long history of Type I diabetes mellitus uncontrolled with all the microvascular complications of retinopathy, nephropathy and neuropathy and macrovascular complications including transient ischemic attack. 2. diabetic ketoacidosis, 3. chronic renal failure, 4. metabolic acidosis secondary to diabetic ketoacidosis and chronic renal failure, 5. chronic anemia because of his chronic renal failure, 6. hypothyroidism, 7. hypertension, 8. hyperlipidemia, 9. history of transient ischemic attack in past and that is why he is on [REDACTED]

A medical examination report dated [REDACTED] indicated that claimant was 73" tall and weighed 189 pounds. His blood pressure was 135/78. The clinical impression is that claimant was stable and that he could occasionally lift less than 10 pounds. He could stand or walk less than 2 hours in an 8 hour day and sit less than 6 hours in an 8

hour work day. He could use his upper extremities for simple grasping, reaching and fine manipulating but not pushing or pulling and he had no mental limitations (pp. 13-14). less and

At Step 2, claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. This Administrative Law Judge finds that claimant has had diabetes mellitus Type I since he was 7 years old and that he was hospitalized at least 3 times in 2010 for complications related to his diabetes and hypertension. Therefore, claimant has established that he has severe impairment or combination of impairments which have lasted or are expected to last for a duration of at least 12 months. Claimant is not 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 currently meet a statutory listing in the code of federal regulations.

At Step 4, the State Hearing Review Team and the evidence contained in the record indicates that claimant could probably not perform light work with his impairments. The State Hearing Review Team determined that claimant could perform sedentary work. This Administrative Law Judge finds that claimant's past work was light work and that there is substantial evidence in the file upon which this Administrative Law Judge could base a finding that claimant is unable to perform work which he has engaged in in the past. Therefore, claimant is not denied disability at step 4.

The Administrative Law Judge will continue to proceed through this 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).

This Administrative Law Judge finds that claimant can probably perform sedentary work if he is properly medicated and if he is able to maintain his blood sugar levels. Claimant's record is replete with evidence that his diabetes mellitus Type I is uncontrolled and that his hypertension is also uncontrolled. Claimant did testify on the record that he cannot afford his medications and that he cannot take his hypertension medication because of his kidney problems. Claimant also testified that he does have leg swelling and neuropathy as well as nephropathy.

This Administrative Law Judge finds that claimant has established by the necessary objective medical evidence on the record 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. Although claimant might be able to work for short periods of time, he was in the hospital March 2010, September 2010 and December 2010 which indicates that he would not be able to be continuously employed because of the complications from his diabetes, hypertension, and neuropathy. The claimant's testimony as to his limitations indicates that he is currently unable to perform even sedentary work. This Administrative Law Judge finds that the objective medical evidence in the record does establish that claimant has no residual functional capacity. Claimant has established that he meets the definition of medically disabled under the Medical Assistance program based upon the objective medical evidence based in the file. Claimant does have neuropathy in both his hands and arms and his legs and feet. Therefore, claimant does not retain bilateral manual hand dexterity on a continuous basis. Claimant has established by the necessary competent, material and substantial evidence on the record that he is disabled for purposes that he is disabled for purposes of Medical Assistance and retroactive Medical Assistance purposes.

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 and retroactive Medical Assistance program as of the March 25, 2010, application date and the 3 months prior (December 2009, January and February 2010).

Accordingly, the department's decision is REVERSED. The department is ORDERED to initiate a review of the March 25, 2010, Medical Assistance and retroactive Medical Assistance application if it has not already done so to determine if all other non-medical eligibility criteria are met. The department shall inform the claimant of a determination in writing.

The department is ORDERED to assist claimant in conducting a medical review in February 2010. At that time, claimant should provide the prior case file, any and all updated medical records from the Social Security Administration as well as the

department of Human Services Disability Determination Services and claimant's treating physicians records from his nephrologist, his family practice doctor, endocrinologist and any other medical documents which may be available at that time.

Landis

/s/

Y. Lain

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

Date Signed: April 20, 2011

Date Mailed: April 20, 2011

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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