

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 201134146
Issue No: 2009, 4031
Case No: [REDACTED]
Hearing Date: October 18, 2011
Jackson County DHS

ADMINISTRATIVE LAW JUDGE: Christopher S. Saunders

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 October 18, 2011. The claimant personally appeared and provided testimony. The claimant was represented by his authorized representative, [REDACTED], of L&S Associates.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA) and retroactive Medical Assistance benefits?

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 January 7, 2011, claimant filed an application for Medical Assistance, retroactive Medical Assistance, and State Disability Assistance benefits alleging disability.
- (2) On February 10, 2011, the Medical Review Team denied claimant's application stating that the claimant was capable of performing other work.
- (3) On February 14, 2011, the department caseworker sent claimant notice that his application was denied.
- (4) On May 13, 2011, the claimant's authorized representative filed a request for a hearing to contest the department's negative action.

- (5) On June 14, 2011, the State Hearing Review Team again denied claimant's application stating that the claimant retained the capacity to perform a wide range of sedentary work.
- (6) The record was left open following the hearing as the claimant produced new medical evidence at the time of hearing. After the new medical evidence was submitted, the State Hearing Review Team again denied the claimant's application on December 7, 2011 stating that the claimant retained the capacity to perform a wide range of simple, unskilled, sedentary work.
- (7) On November 24, 2010, the claimant was admitted to [REDACTED] for right sided leg pain. He was noted to have pain in the lower lumbar region around L5-S1 upon palpitation. He was graded with strength on his left and right sides following straight leg raising of 4/5. It was also noted that the claimant had poor effort. His MRI was reviewed and the examining doctor noted that the results were consistent with moderate degenerative disc disease L4-L5 with mild broad-based posterior disc bulge with no significant central spinal canal stenosis. It was recommended that the claimant undergo physical therapy as surgical intervention was not recommended. The claimant was also diagnosed with diabetes mellitus type 2. (Department Exhibit A pages 41-44).
- (8) The claimant was admitted to [REDACTED] On October 28, 2010 with chief complaints of polyuria, polydipsia, and back pain. He was given a discharge diagnosis remarkable for new onset diabetes mellitus, degenerative disc disease, back pain, tobacco dependence, and obesity. (Department Exhibit A pages 32-40).
- (9) The claimant underwent an MRI of the lumbar spine on October 29, 2010. The impressions given as a result of the MRI were moderate degenerative disc disease at L4-L5 with mild broad based posterior disc bulge with no significant central spinal canal stenosis. Mild narrowing of the inferior bilateral foramen at L4-L5, slightly greater on the right secondary to disc osteophyte complex and mild disc desiccation at L5-S1. The claimant was also noted to have minimal grade 1 anterolisthesis of L5 over S1 secondary to bilateral pars defects. (Department Exhibit A pages 22-23).
- (10) On January 10, 2011, the claimant underwent an EMG and a nerve conduction report at [REDACTED]. Both studies resulted in normal findings. (Department Exhibit A pages 17-18).
- (11) The claimant was seen at [REDACTED] on March 2, 2011. The impressions stated from that evaluation are lumbar degenerative disc disease, chronic back pain, and narcotic dependence. It was noted that the objective findings were not consistent

with the level of symptoms and that there was evidence of psychological overlay. (Department Exhibit C pages 1-6).

- (12) The claimant was admitted to [REDACTED] on March 31, 2011 with diabetes mellitus out of control and severe hypothyroidism. It was noted that the claimant had stopped taking his medication because he felt that it was not doing any good. He was discharged on April 4, 2011 with final impressions consisting of acute diabetes mellitus, out of control with non-ketotic acidosis, hypothyroidism out of control due to medications being stopped, and chronic low back pain with degenerative disc disease and mild spondylolisthesis. (Claimant Exhibit A pages 3-7).
- (13) The claimant was seen again at [REDACTED] on May 31, 2011. The final impressions from that visit included diabetes mellitus out of control (in a noncompliant patient), probable transitory ileus secondary to narcotics, and chronic pain syndrome with chronic low back pain and subjective sciatica. (Claimant Exhibit A pages 1-2).
- (14) On September 15, 2011, the claimant was admitted to [REDACTED] with acute chest pain and hyperglycemia. The claimant was given a stress test, the results of which were normal. The chest pain was determined to be non-cardiac. He was assessed with atypical chest pain, non-cardiac, diabetes, history of anxiety and depression, hyperlipidemia, hyperthyroidism, pituitary cyst, and poor compliance. (Claimant Exhibit A pages 10-19).
- (15) The claimant underwent a psychological evaluation on April 14, 2011. The results found that the claimant's problems were mainly physical in nature and he was diagnosed with panic disorder without agoraphobia and cannabis dependence, reduced but not in full remission. He was assessed with a GAF of 60. (Department Exhibit D).
- (11) Claimant is a 42 year-old man, date of birth [REDACTED]. He stands 5'8" tall and weighs 200 lbs. He completed the ninth grade in school and spent his first six years of school in special education. He did not subsequently obtain a GED and has no other formal education or training. The claimant has a work history consisting of light to heavy work which was generally unskilled in nature. The claimant is currently not working and has not done so since September 2010.
- (12) The claimant has filed for Social Security Disability benefits. He was denied at application but has appealed that determination.

CONCLUSIONS OF LAW

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).

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).

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

In general, claimant has the responsibility to prove that he/she is disabled. Claimant's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only claimant's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the claimant has an impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

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.

At step one, the Administrative Law Judge must determine whether the claimant is engaging in substantial gainful activity (20 CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and

gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities (20 CFR 404.1572(a) and 416.972(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized (20 CFR 404.1572(b) and 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that he/she has demonstrated the ability to engage in SGA (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, he/she is not disabled regardless of how severe his/her physical or mental impairments are and regardless of his/her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the Administrative Law Judge must determine whether the claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" and that said impairment(s) have met the duration requirement (20 CFR 404.1520(c) and 416.920(a)(2)(ii) and (c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work (20 CFR 404.1521 and 416.921; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p). In order for an impairment(s) to meet the duration requirement, the impairment(s) must have lasted or be expected to last for at least 12 months, unless the impairment(s) is expected to result in death (20 CFR 416.909). If the claimant does not have a severe medically determinable impairment or combination of impairments that have met the duration requirement, he/she is not disabled. If the claimant has a severe impairment or combination of impairments that have met the duration requirement, the analysis proceeds to the third step.

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). 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).

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).

At step three, the Administrative Law Judge must determine whether the claimant's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the claimant's impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement (20 CFR 404.1509 and 416.909), the claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine the claimant's residual functional capacity (20 CFR 404.1520(e) and 416.920(e)). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of the claimant's impairments, including impairments that are not severe, must be considered (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, the Administrative Law Judge must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his/her past relevant work (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as the claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the claimant to learn to do the job and have been SGA (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If the claimant has the residual functional capacity to do his/her past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), the Administrative Law Judge must determine whether the claimant is able to do any other work considering his/her residual functional capacity, age, education, and work experience. If the claimant is able to do other work, he/she is not disabled. If the claimant is not able to do other work and meets the duration requirements, he/she is disabled.

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).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

The law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant's symptoms can be managed to the point where substantial gainful activity can be achieved, a finding of not disabled must be rendered.

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).

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

At Step 2, the claimant's symptoms are evaluated to see if there is an underlying medically determinable physical or mental impairment(s) that could reasonably be expected to produce the claimant's pain or other symptoms and has met the durational requirement. This must be shown by medically acceptable clinical and laboratory diagnostic techniques. Once an underlying physical or mental impairment(s) has been shown, the Administrative Law Judge must evaluate the intensity, persistence, and limiting effects of the claimant's symptoms to determine the extent to which they limit the claimant's ability to do basic work activities. For this purpose, whenever statements about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not substantiated by objective medical evidence, a finding on the credibility of the statements based on a consideration of the entire case record must be made.

This Administrative Law Judge finds that the objective medical evidence of record does support the claimant's contention that he is suffering from a severe physical or mental

impairment that has lasted or is expected to last for 12 months. The objective medical evidence of record however does show that claimant's impairments meet the *de minimus* level of severity and duration required for further analysis. The claimant is therefore not precluded from a finding of disability at Step 2. The Administrative Law Judge will then proceed with the sequential evaluation.

The analysis then proceeds to Step 3. The objective medical evidence of record does not support a finding that claimant's diagnosed impairments, standing alone or combined, are severe enough to meet or equal any specifically listed impairments; consequently, the analysis must continue.

At Step 4, it must be determined whether or not claimant has the ability to perform his past relevant work. The claimant has a history of light to heavy unskilled employment. There is objective medical evidence to support the contention that the claimant would be unable to continue to perform his past relevant work. The analysis will then proceed to Step 5.

At Step 5, this Administrative Law Judge must determine whether or not claimant has the residual functional capacity to perform some other jobs in the national economy. This Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity. The objective medical evidence of record shows that the claimant retains the residual functional capacity to perform sedentary work. Accordingly, the claimant is precluded from a finding of disability at Step 5.

The objective medical evidence of record shows that the claimant is suffering from degenerative disc disease, however, the claimant's MRI showed that the degenerative changes were moderate and that there was no significant central spinal canal stenosis associated with the claimant's condition. Additionally, the claimant's EMG and nerve conduction reports both showed normal results. The claimant's straight leg raising tests showed 4 of 5 strength in both legs and it was also noted that the claimant provided poor effort. It was also noted that the claimant's symptoms were not consistent with the objective medical findings. The claimant's diabetes has been out of control, but due mainly to the claimant being noncompliant with his treatment regiment. When the claimant is compliant with his treatment regiment, his condition improves. The objective medical evidence of record supports the contention that the claimant retains the residual functional capacity to perform sedentary work.

Medical vocational guidelines have been developed and can be found in 20 CFR, Subpart P, Appendix 2, Section 200.00. When the facts coincide with a particular guideline, the guideline directs a conclusion as to disability. 20 CFR 416.969. Under the Medical-Vocational guidelines, a younger individual (age 41), with limited education and an unskilled work history who is capable of sedentary work is not considered disabled pursuant to Vocational Rule 201.24.

The claimant has not presented the required competent, material and substantial evidence which would support a finding that the claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). Although the claimant has cited medical problems, the clinical documentation submitted by the claimant is not sufficient to establish a finding that the claimant is disabled. There is no objective medical evidence to substantiate the claimant's claim that the alleged impairment(s) are severe enough to reach the criteria and definition of disability. The claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

The department's Bridges 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 claimant does not meet the disability criteria for State Disability Assistance benefits.

The Department has 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 department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance, retroactive Medical Assistance, and State Disability Assistance benefits.

Accordingly, the department's decision is **AFFIRMED**.

/s/

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

Date Signed: January 12, 2012

Date Mailed: January 13, 2012

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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