

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

IN THE MATTER OF:



Reg. No: 201137075  
Issue No: 2009  
Case No: [REDACTED]  
Hearing Date: September 6, 2011  
County: Berrien

**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 September 6, 2011. Claimant personally appeared and testified.

**ISSUE**

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (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 April 26, 2011, claimant filed an application for Medical Assistance benefits alleging disability.
2. On May 24, 2011, the Medical Review Team denied claimant's application stating that claimant's impairments lack duration.
3. On May 27, 2011, the department caseworker sent claimant notice that his application was denied.
4. On June 3, 2011, claimant filed a request for a hearing to contest the department's negative action.
5. On July 1, 2011, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the objective medical does not fully support the findings of MRT determination. The

claimant has continued limitations that will impact the ability to perform gainful task. These particular limitations have not attained the level to where they would be considered stable and even for a short period of time. It is reasonable that claimant will be limited to perform a light and exertional task. The claimant's impairments 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 exertional work. Therefore, based on the claimant's vocational profile of 27-years old, a less than high school education, and a history of less than gainful employment, MA-P is denied using Vocational Rule 202.17 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days. Listing 3.01, 4.02, 4.04, and 4.06 were considered in this determination.

6. The hearing was held on September 16, 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 November 10, 2011.
8. On December 12, 2011, the State Hearing Review Team again denied claimant's application stating in its analysis and recommended decision: the claimant is morbidly obese with a body mass index of 46.3. His blood pressure is slightly elevated. His lungs were clear and murmur could be heard at the heart. The echocardiogram confirmed arteries with ventricular septal defect. The claimant's impairments 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 light work. Therefore, based on the claimant's vocational profile of a younger individual, 11<sup>th</sup> grade education, and unskilled work history, MA-P is denied using Vocational Rule 202.17 as a guide. Retroactive MA-P was considered in this case and is also denied. SD is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days.
9. Claimant is a 27-year-old man whose birth date is [REDACTED]. Claimant is 5' 4" tall and weighed 230 pounds. Claimant attended the 12<sup>th</sup> grade and has no GED. Claimant is able to read and write and does have basic math skills.
10. Claimant last worked at Popeyes in 2001, before he became sick.

11. Claimant alleges as disabling impairments: heart defect, pneumonia, pulmonary hypertension.

### **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 subjective and objective medical evidence on the record indicates claimant testified on the record that he lives alone and his mother helps him pay rent. Claimant is single with no children who live with him and he doesn't have any income. Claimant does receive Food Assistance Program benefits. Claimant does have a driver's license and he can drive 45 minutes and usually drives with his mom. Claimant testified that his mom cooks for him and that he grocery shops when he gets his Food Assistance Program benefits and his mom helps him. Claimant testified that he does vacuum, clean the table and the bathroom, that he watches television 1 time per day. Claimant testified that he can stand for 15 minutes, and sit for 30-40 minutes at a time. He can walk less than a mile. Claimant testified that he can squat, bend at the waist, shower and dress himself and tie his shoes but not touch his toes, and his back is fine and his knees hurt. Claimant testified that his level of pain on a scale from 1-10 without medication is 7-8 and with medication is a 7-8. Claimant testified that he is right handed and that his hands and arms are fine, legs and feet are fine, the heaviest weight he can carry is 10 pounds. Claimant testified that he does not smoke, drink alcohol, or take any drugs besides medication. The medical examination report dated October 17, 2011, indicates that claimant is 165cm: weight 272 lbs, blood pressure 144/92. The clinical impression is that claimant's condition is deteriorating (Page A1, A2). On physical examination he was well appearing, not in any acute distress. His height was 163 cm and his weight 272 lbs. His weight on the last visit was 255 lbs, so he had almost 20 pound weight gain increase in 5 months. His body mass index was 46.3, which is up from 43.8 on the last visit. His heart rate was 78 pr minute which is regular. Respiratory rate is 14 per minute, which is nonlabored. Saturation is 98% on room air. His blood pressure was 144/92. HEENT within normal limits with no evidence of dysmorphism. No pallor and no cyanosis is seen. Moist mucus membranes are seen. Neck is supple. Chest is clear to auscultation bilaterally. A detailed examination of the cardiovascular system revealed a normally active precordium. There is a well healed midline sternotomy scar with chest tube scars. The first heart sound is normal. The second heart sound is single. He has a 3/6 harsh systolic ejection murmur heard at the left upper sternal border with a grade 2 diastolic decrescendo murmur heard at the left upper sternal border also. He is obese and hepatosplenomagely and cannot be reliably ruled out. Abdomen is in general soft and non tender. The femoral pulses are felt. There is no radial-femoral delay. There is no peripheral edema, cyanosis, or clubbing.

Electrocardiogram was performed and demonstrated normal sinus rhythm at a rate of 77 beats per minute. There is northwest axis and right bundle branch block seen with QRS duration of 140 milliseconds. There is one single premature ventricular contraction seen during this EKG. This finding of right bundle block is not new when compared to

his previous EKG. An Echocardiogram was mild plus tricuspid regurgitation, which is a systemic valve. The systemic ventricular function which is the right ventricle was moderate to severely reduced. The pulmonary venous and the systemic venous baffle appeared patent. The left ventricular function appeared normal. The aorta appeared patent. (Page A5). There was moderate to severely decreased systemic ventricular function, New York heart association class III with symptoms of dyspnea and orthopnea and hypertension. The doctor indicated that claimant does not require any restrictions as long as he's allowed to rest when he's tired. He does require antibiotic prophylaxis. (Page A7).

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. 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 no disabling mental impairments:

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



**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]