

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

IN THE MATTER OF:

[REDACTED]

Reg. No:

[REDACTED]

ADMINISTRATIVE LAW JUDGE: [REDACTED]

**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 [REDACTED]. 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 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 [REDACTED], claimant filed an application for Medical Assistance and Retroactive Medical Assistance benefits alleging disability.
- (2) On [REDACTED] the Medical Review Team denied claimant's application stating that claimant could perform prior work.
- (3) On [REDACTED] department caseworker sent claimant notice that his application was denied.
- (4) On [REDACTED] claimant filed a request for a hearing to contest the department's negative action.
- (5) On [REDACTED], the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the objective medical evidence supports that claimant would retain the ability to perform light exertional task. The claimant contains the physical residual functional capacity to perform light exertional work. The claimant's

past work was sedentary and semi-skilled in nature. Therefore, the claimant retains the capacity to perform a past relevant work as a telemarketer. MA-P is denied per 20 CFR 416.920(e). Retro MA-P was considered in this case and is also denied. SDA was not applied for by the claimant but would have been denied per PEM 261 due to the capacity to perform past relevant work. Listing 1.03, 3.10, 4.02, 4.04, 4.05, and 8.01 were considered in this determination.

- (6) The hearing was held on [REDACTED]. 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 [REDACTED] on [REDACTED].
- (8) On [REDACTED] the [REDACTED] again denied claimant's application stating that in its analysis and recommendation: the additional evidence does not add to the evidence already in the file. The determinations of the MRT and SHRT are affirmed. The claimant retains the physical residual functional capacity to perform sedentary exertional work. The claimant's past work was sedentary and semi-skilled in nature. Therefore, the claimant retains the capacity to perform a past relevant work (Telemarketer). MA-P is denied MA-P is denied per 20 CFR 416.920(e). Retro MA-P was considered in this case and is also denied. SDA was not applied for but would have been denied per PEM 261 due to the capacity to perform past relevant work. Listing 1.03, 3.10, 4.02, 4.04, 4.05, 6.02, 8.01, and 9.08 were considered in this determination.
- (9) Claimant is a [REDACTED] man whose birth date is [REDACTED]. Claimant is [REDACTED]. Claimant is a high school graduate. Claimant is able to read and write and does have basic math skills.
- (10) Claimant last worked [REDACTED], at [REDACTED] university as a [REDACTED] calling people and doing computer work. Claimant has also worked in Telemarketing and retail as a [REDACTED] and calling people on delinquent taxes.
- (11) Claimant alleges as disabling impairments: diabetes mellitus, psoriasis, eczema, atrial fibrillation, and arthritis, shortness of breath, sleep apnea, congestive heart failure and 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 has not worked since [REDACTED]. Claimant is not disqualified from receiving disability at Step 1. However, claimant's impairments do not meet duration as they have not kept him from working for a period of 12 months or more.

The subjective and objective medical evidence on the record indicates that claimant testified on the record that he lives with his girlfriend in a house and his girlfriend supports him. He is single with no children under 18 and does not have any income. Claimant receives [REDACTED] benefits and the Adult Medical Program. Claimant does have a driver's license and drives 2 miles one time per week to the store. Claimant testified his girlfriend usually cooks for him but he microwaves things like soup. Claimant testified that his grocery shops every 2 weeks with no help and usually uses the amigo cart. Claimant testified that his girlfriend cleans his home and his hobby is fishing but he hasn't been in 2 years and he usually watches television 2-3 hours per day. Claimant testified that he can stand for 15 minutes, sit for 30 minutes at a time and walk a ½ block. Claimant testified that he cannot squat but he's able to bend at the waist. Claimant testified that his back and knees hurt and are weak and he able to shower and dress himself but not touch his toes or tie his shoes. Claimant stated his level of pain on a scale from 1-10 without medication is 6 and with medication is a 4-5. Claimant stated that the heaviest weight he can carry is 10 pounds and that he had eczema on his hands and arms and he has fluid retention in his legs and feet. Claimant testified that he does not smoke, drink and has never taken drugs on a typical day he gets up takes his medications, watches television, eats lunch watches television for 2 more hours walks a ½ block to mailbox, takes a shower, eats and goes to bed.

The objective medical evidence on the record indicates that a hospital consultative examination dated [REDACTED], indicates that claimant's vital signs were temperature 97.8, blood pressure 112/73, heart rate 54, respiratory rate 20, oxygen saturation 92% at 2 liters nasal cannula. The head was normocephalic and atraumatic. The eye had pupils equal and round and reactive to light and accommodation. No conjunctival injection noted. Extraocular muscles intact. The heart was difficult to auscultate due to body habitus, irregular rhythm and graphic rate and hard to decipher if murmurs. The lungs were difficult to auscultate due to body habitus. Decreased breath sounds. No apparent wheezing or crackles. The abdomen was soft, nontender, nondistended morbidly obese. Positive bowel sounds times 4. Lower extremities had no clubbing or cyanosis 1+ pitting edema bilaterally. In the vascular area there was no carotid bruit or JVD noted. Radio pulse 2+, dorsalis pedis pulse 1+. Neurological area cranial nerves II-XII intact. No motor or sensory deficits noted. The assessment was congestive heart failure and it was an acute and chronic process most likely due to patient's noncompliance. Claimant was also assessed with atrial fibrillation and obstructive sleep apnea. (Page 8, 9).

A [REDACTED] indicates that his blood pressure was 101/69, heart rate 59, respiratory rate 36, saturation 93% of room air, temperature 97.3, weight is 409 pounds. He was alert and oriented time 3 in mild distress. Head was atraumatic heart was irregular rhythm, no murmur S3 or S4 hard.

Lungs were clear to auscultation bilaterally decreased breath sounds on the left side, no rhonchi or crackles. The abdomen was obese. Bowel sound were present, soft non distendent and nontender. There was 1+ pitting edema of bilateral lower extremities. No erythema. Vascular area had no carotid bruit or JVD. No cervical or auxillary adenopathy. The neurologic area cranium nerves II-XII were grossly intact. The assessment was dyspnea and that the patient had a history of congestive heart failure with an ejection fraction of 35% as well as atrial fibrillation but upon receiving cardizem in the ER the symptoms were improved (Page A-14).

This Administrative Law Judge did consider approximately all 220 pages of medical reports contained in the file in making this determination.

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. 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 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. Under the Medical-Vocational guidelines, claimant retains the ability to perform sedentary work. His prior work was sedentary and semi-skilled in nature. Therefore, claimant retains the capacity to perform of past relevant work as a Telemarketer.

### **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, and Retroactive Medical Assistance benefits. The claimant should be able to perform a wide range of light or sedentary work even with his impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.

/S/ \_\_\_\_\_  
[Redacted Signature]

Date Signed: 4/12/11

Date Mailed: 4/12/11

**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.

[Redacted]