

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2012-51233
Issue No: 2009

[REDACTED]

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 [REDACTED]. Claimant personally appeared and testified.

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 [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's impairments were non-exertional.
3. On [REDACTED], the 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 claimant has a history of polysubstance abuse with reported remission. He has no history of psychiatric hospitalizations or frequent

decompensation. In [REDACTED] he reported he felt stable and his mental status was unremarkable. Therefore, the claimant's conditions do not satisfy the requirements of listings 12.04, 12.06 or 12.09. He has a history of hypertension and his blood pressure was fairly well controlled without evidence of heart failure. He has gout flares, but his grip, pincher and dexterity were intact. Gait was within normal limits. Therefore, his conditions do not satisfy the requirements of listings 1.02, 4.02, 4.04 or 14.09. The claimant is not currently engaging in substantial gainful activity based on the information that is available in the file. 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 simple, unskilled, medium work. A finding about the capacity for prior work has not been made. However, this information is not material because all potentially applicable medical-vocational guidelines would direct a finding of not disabled given the claimant's age, education and residual functional capacity.

Therefore, based on the claimant's vocational profile (advanced age at 56, high school equivalent education and history of unskilled/semi-skilled work); MA-P is denied using Vocational Rule 203.21 as a guide. Retroactive MA-P was considered in this case and is also denied.

6. The hearing was held on [REDACTED] 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 [REDACTED]
8. On [REDACTED] 2012, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The newly presented evidence by the claimant is of a non-medical nature and therefore, not material to this determination. Drug and alcohol abuse (DAA) is present, but not material to this determination. The medical evidence supports that the claimant would retain the ability to perform medium exertional tasks of a simple and repetitive nature. The claimant is not currently engaging in substantial gainful activity based on the information that is available in the file. The claimant's impairments/combination of impairments does not meet/equal the intent or severity of a Social Security Administration (SAA) listing. The medical evidence of record indicates that the claimant retains the capacity to perform medium exertional tasks of a simple and repetitive nature. DAA is present, but not material to this determination. The claimant's past work as a machine operator/parts inspector, 609.684-010, 4L and, trim press operator, 615-685-030, 3M. As such, the claimant would be unable to perform the duties associated with their past work. Likewise, the claimant's past work skills will not transfer to other occupations.

Therefore, based on the claimant's vocational profile (56 years old, a high school equivalent education and a history of light and medium exertional, semi-skilled employment): MA-P is denied, 20CFR416.920 (e&g), using Vocational Rule 203.14 as a guide. Retroactive MA-P was considered in this determination and is also denied. SDA was not applied for by the claimant, but would have been denied per BEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days. Listings 1.02, 4.04, 12.04, 12.06 and 12.09 were considered in this determination.

9. Claimant is a [REDACTED] whose birth date is [REDACTED]. Claimant is 5'10" tall and weighs 186 pounds. Claimant has a GED and is able to read, write and he does have basic math skills.
10. Claimant last worked [REDACTED] as a bell ringer for the Salvation Army. Claimant has also worked as a press operator and as a machine operator. He was in the military for several years as well.
11. Claimant alleges as disabling impairments: bipolar disorder, anger management problems, depression, arthritis, gout, substance abuse, stress, dizziness and low self-esteem.

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 that claimant testified on the record that he lives with his wife in a trailer park and he has no children under 18 who live with him. Claimant has no income and receives the adult medical program. He does not have a driver's license and his wife takes him where he needs to go. Claimant stated his wife grocery shops and cleans the home. He watches television 6 to 7 hours per day. Claimant testified he can stand for 1 hour and can sit for 2 hours at a time. He can walk 1 block, squat, bend at the waist, shower and dress himself and tie his shoes, but not touch his toes. Claimant testified that his back hurts and his knees are fine. He also stated that his level of pain on a scale of 1 to 10 without pain medication is a 7 to 8 and with medication is a 2 to 3. Claimant testified that he is right handed and that his hands and arms are fine, but he does gout so they hurt sometimes. He stated that his legs and feet swell because of his gout. Claimant stated the heaviest weight he can carry is 5 to 7 pounds. Claimant testified that he stopped drinking in [REDACTED] and stated he used to smoke marijuana, use acid, speed and crack

cocaine, but has not used in [REDACTED]. Claimant testified that he sits around all day and does not engage in sexual relations. He stated that he dreams about using and he doesn't feel good about himself.

A consultative examination dated [REDACTED] indicates that the claimant was 69" tall and weighed 181 pounds with a BMI of 26.7. His blood pressure was 120/60. His gait was within normal limits. He had mild tenderness to palpation at the MTP joint of the right great toe. There was no erythema or effusion noted of any joint. Grip, pincher strength and dexterity were intact. Range of motion of all joints was full. Motor and sensory functions appeared to be intact. Straight leg raise was negative. He reported he was not experiencing an attack of gout at the time of the examination.

Benson Harbor Health Center office note dated [REDACTED] (Pg. 14) indicated that the claimant's blood pressure was 126/88. His gout was getting better.

A psychiatric evaluation dated [REDACTED] (Pgs. 57-59) indicated that the claimant reported a long history of substance abuse. He reported that he quit using drugs and alcohol about one year and one month prior. He denied any psychiatric hospitalization. He reported entering substance abuse programs approximately four times. Diagnoses included mood disorder, polysubstance abuse and rule out post-traumatic stress disorder (PTSD).

A medication review dated [REDACTED] (Pgs. 47-48) indicated that the claimant reported he felt stable on his medications. He denied psychotic features as well as suicidal or homicidal ideation. He was appropriately dressed. He was pleasant and cooperative. There was no psychomotor agitation or retardation. He reported his mood as "pretty good" and his affect was mood congruent and appropriate. Thought processes and content were unremarkable.

A Great Lakes Medical Evaluation dated [REDACTED] [REDACTED] (Pg. 87) indicates that claimant had a normal examination. An orthopedic and sports physical therapy evaluation dated [REDACTED] (Pg. 41) indicates claimant was discharged from physical therapy and all indicates all treatment goals met, six visits.

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 the following disabling mental impairments: depression, anger management problems, stress and low self-esteem.

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, a person who is advanced (age [REDACTED] with a high school education and a history of light and medium exertional semi-skilled employment, which is limited to light work is not considered disabled pursuant to Medical Vocational Rule 203.14.

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.

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

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

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/jk

cc: [REDACTED]
MAHS