

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2012-68415
Issue No: 2009;4031
Case No: [REDACTED]
Hearing Date: December 18, 2012
Lenawee County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing to protest the denial of claimant's application for MA. After due notice, an in person hearing was held on December 18, 2012. Claimant personally appeared and testified. Claimant was represented at hearing by [REDACTED] representative [REDACTED] [REDACTED]

ISSUE

Whether the claimant meets the disability criteria for Medical Assistance (MA-P) and State Disability Assistance (SDA)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. On March 6, 2012, claimant filed an application for Medical Assistance, Retroactive Medical Assistance and State Disability Assistance benefits alleging disability.
2. On May 26, 2012, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical Vocational rule 202.21.
3. On May 31, 2012, the department caseworker sent claimant notice that his application was denied.
4. On August 2, 2012, claimant filed a request for a hearing to contest the department's negative action.

5. On September 12, 2012, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the claimant had a myocardial infarction in February, 2012 and underwent coronary artery bypass grafting. Pulmonary evaluation showed the claimant's DLCO was slightly reduced and his PFS showed a mild degree of chronic obstructive pulmonary disease. A physical examination in August, 2012 showed the claimant was de-conditioned and overweight. He had some changes consistent with his chronic obstructive pulmonary disease. He had trace edema. He had synovial thickening about the knees and wrists. Grip strength was decreased but dexterity was unimpaired. His motor strength was decreased in the left lower extremity but tone was normal. The claimant walked with a guarded gait and used a walker. The doctor indicated the claimant needed the walker at least a short term but might be able to wean off it over time. However, when the claimant went to mental status examination in August, 2012, he did not use the walker and had a normal gait. The claimant's limitations at the August 27, 2012 examination were not consistent with findings at other examinations. However, the claimant will be limited to sedentary work at this time. The claimant is not currently engaging in substantial gainful activity based on the information that is available in 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, sedentary 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 (younger individual, limited education and history of construction work), MA-P is denied using Vocational Rule 201.18 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA 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.
6. The hearing was held on December 18, 2012. 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 December 19, 2012.
8. On February 11, 2013, the State Hearing Review Team approved claimant for Medical Assistance and State Disability Assistance benefits but denied claimant for Retroactive Medical Assistance stating in its analysis and recommendation: the medical evidence of record indicates the claimant reasonably retains the ability to perform sedentary exertional tasks of a

simple and repetitive nature. As of age 49 and younger, Vocational Rule 201.18 would direct a finding of not disabled. As of age 50, which per Social Security Administration (SSA) guidelines is attained as of May 11, 2013, Vocational Rule 201.09 would direct a finding of disabled. Also per SSA guidelines, it is permissible to deem up to three months of coverage when all other considerations being equal would otherwise direct a finding of disability where the claimant is age limited. Benefit onset to February 11, 2013. The claimant is not currently engaging in substantial gainful activity based on the information that is available in 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 sedentary exertional tasks. The claimant's past work was: construction, 869.664-014, 4H. 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 (49 years old, a less than high school education and a history of medium exertional, semi-skilled employment), MA-P is denied, 20CFR416.920 (e&g), using Vocational Rule 201.18 as a guide. Retroactive MA-P was considered in this determination and is also denied. SDA is 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. Based on the claimant's vocational profile (50 years old, a less than high school education and a history of medium exertional, semi-skilled employment), MA-P is approved using Vocational rule 201.09 as a guide, onset to February 11, 2013. SDA is approved in accordance with BEM 261. Retroactive MA-P is denied as noted above.

9. Claimant is a 49-year-old man whose birth date is [REDACTED]. Claimant is 6'5" tall and weighs 240 pounds. Claimant attended the 11th grade and does not have a GED. Claimant is able to read and write and does have basic math skills.
10. Claimant last worked in September, 2010 as a self-employed handy man from 1978-2010. Claimant has also worked as a cook at a golf course.
11. Claimant alleges as disabling impairments: back problems, triple bypass, coronary artery disease, chronic obstructive pulmonary disease, balance problems, heart catheter, clicking noise in his chest, shortness of breath, asthma symptoms, hypertension and depression.

CONCLUSIONS OF LAW

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 Program Administrative Manual (BAM), the Program Eligibility Manual (BEM) and the Program Reference Manual (PRM).

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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Because of the SHRT determination, it is not necessary for the Administrative Law Judge to discuss the issue of disability, per BAM, Item 600 from February, 2013 forward.

The department is required to initiate a determination of claimant's financial eligibility for the requested benefits, if not previously done from February, 2013 forward.

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 lives with his sister in a house and his sister pays the rent. Claimant is single with no children under 18 who live with him. Claimant has no income and does receive Food Assistance Program benefits. Claimant testified that he does not have a driver's license but his sister

takes him where he needs to go. Claimant testified that he cooks 1-2 times per week and he cooks things like hamburgers and eggs and he grocery shops one time per month and needs help picking up heavy objects. Claimant testified that he can do light laundry and that he watches television 7-8 hours per day. Claimant testified that he can stand for 10 minutes at a time and sit for 20 minutes at a time. Claimant can walk 15 feet and uses a cane which is prescribed by his doctor. Claimant testified that he cannot squat or touch his toes and he can only bend a little at the waist but he is able to shower and dress himself and tie his shoes. Claimant testified that he has arthritis in his back and knees and he has torn tendons in his right and left knee. Claimant testified that he is left handed and that he has some problems with his left hand and his legs/feet hurt. Claimant testified the heaviest weight he can carry is a gallon of milk for short distances and that he no longer smokes, he quit in February, 2012. Claimant testified that he quit drinking in 2004 and he has never taken any drugs besides medication. Claimant testified that on a typical day sits down in the kitchen, sits in living room, watches television, takes a nap, eats supper, watches television and then goes to bed.

The claimant was admitted February 23, 2012 with substernal chest pain. He had a non Q wave myocardial infarction and was taken for cardiac catheterization. He was found to have preserved left ventricular function with severe 4 vessel coronary artery disease (p 40). He underwent coronary artery bypass grafting times 3 (p 52 & 271). Cardiology follow up dated March 16, 2012 showed the claimant had a brief spell of atrial fibrillation following his bypass surgery. Since his discharge, he had the usual sternal discomforts. His incisions were healing well. He was being enrolled in cardiac rehabilitation (records from DDS). Pulmonary and critical care specialist's report dated April 18, 2012 showed the claimant had been seen in March, 2012 for chronic obstructive pulmonary disease/hypoxemia. He was placed on oxygen nocturnally and as needed during the day, as well as given meter dose inhaler, albuterol for possible chronic obstructive pulmonary disease. His pulmonary function study on April 18, 2012 showed he was 76" and 257 lbs. His pre-bronch FEV1 was 3.43 and FVC was 4.47, showing mild degree of disease at the time. His DLCO was slightly reduced. Impression was mild chronic obstructive pulmonary disease (records from DDS). An examination dated August 27, 2012 showed the claimant appeared de-conditioned and mildly depressed. He was 242 lbs. He had scars from his previous surgery. His chest revealed increased AP diameter with prolongation of the expiratory phase. There was wheezing present. There was no accessory muscle use. His heart was regular in rate and rhythm without enlargement. There was normal S1 and S2. There was no clubbing or cyanosis but there was trace edema. Peripheral pulses were intact. He had lumbar spine straightening. He had synovial thickening about the knees and wrists. Grip strength was decreased bilaterally. However, dexterity was unimpaired. There was no paravertebral muscle spasm. He had decrease motion of the cervical spine, lumbar spine, shoulders, knees and wrists. Motor strength was 3/5 in the left lower extremity. Tone was normal. Sensory was intact to light touch and pinprick. He walked with a guarded gait with the use of a walker. Reflexes were 2+ bilaterally in the upper extremities and 0 bilaterally at the knee and ankle. The doctor indicated that the claimant does require the use of his walker at least short term but might be able to wean off it over time (records from DDS). A mental status dated August 21, 2012 showed the claimant walked with a normal gait. His hygiene was clean. The claimant was relaxed

and pleasant. He was appropriately spontaneous. There was no evidence of a thought disorder. His emotional dynamics were animated and expressive. Affect was dysphoric. His speech was articulate. Diagnoses included depression- mixed dysthymia and adjustment types and history of alcoholism in longstanding and committed remission (records from DDS). A SOLQ from the Social Security Administration indicates that claimant's appeal, September 26, 2012, indicated not disabled. Medical examination report of July 6, 2012 indicates claimant was 76" tall, weighed 261 lbs and blood pressure was 130/90. He had chronic obstructive pulmonary disease. He had some weakness in his lower back and legs. The clinical impression was everything was stable.

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.

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 younger individual (age 49), with a less than high school education and an unskilled work history who is limited to sedentary work is not considered disabled.

The department's Program 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 either

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 Retroactive Medical Assistance benefits. Claimant should be able to perform a wide range of sedentary work with his impairments. The Department has established its case upon the preponderance of evidence.

Accordingly, the department decision is partially AFFIRMED up to February 11, 2013.

Pursuant to the State Hearing Review Team, claimant is approved Medical Assistance and State Disability Assistance benefit onset from February 11, 2013 forward.

Accordingly, the department is **ORDERED** to initiate a review of the claimant's request for Medical Assistance and State Disability Assistance from February 11, 2013 forward if it is not all ready done so it can determine if all other non medical eligibility criteria are met. The department shall inform the claimant of the determination in writing and if the

- the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

LYL/las

cc:

