

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2012-72984
Issue No: 2009
Case No: [REDACTED]
Hearing Date: November 27, 2012
Jackson 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. After due notice, an in person hearing was held on November 27, 2012. Claimant personally appeared and testified. Claimant was represented at hearing by [REDACTED] of [REDACTED]

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 2, 2012, claimant filed an application for Medical Assistance and Retroactive Medical Assistance benefits alleging disability.
2. On May 19, 2012, the Medical Review Team denied claimant's application stating that claimant is engaged in substantial gainful employment.
3. On May 23, 2012, the department caseworker sent claimant notice that his application was denied.
4. On August 20, 2012, claimant filed a request for a hearing to contest the department's negative action.
5. On October 8, 2012, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the claimant has a history of lumbar fusion and a myocardial infarction with stenting to the RCA. In July, 2012, a limited echocardiogram showed an

EF of 55%. In September, 2012, he had limited motion of the spine. Strength, tone and reflexes were normal. His gait was stable. He was anxious but answered questions appropriately and his speech was normal. 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, light 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 (closely approaching advanced age at 50, high school education and history of unskilled/semiskilled work), MA-P is denied using Vocational Rule 202.13 as a guide. Retroactive MA-P was considered in this case and is also denied.

6. The hearing was held on November 27, 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 January 4, 2013.
8. On February 11, 2013, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the claimant has a history of lumbar fusion and a myocardial infarction with stenting to the RCA. In July, 2012, a limited echocardiogram showed an EF of 55%. In September, 2012, he had limited motion of the spine. Strength, tone and reflexes were normal. His gait was stable. He was anxious but answered questions appropriately and his speech was normal. A cardiac catheterization in October, 2012 showed 50% in-stent restenosis in the mid to distal RCA, otherwise patent normal coronary arteries. Medical management recommended. 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, light 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 (closely approaching advanced age at 50, high school education and history of unskilled/semiskilled work), MA-P is denied using Vocational Rule 202.13 as a guide. Retroactive MA-P was considered in this case and is also denied.

9. Claimant is a 50-year-old man whose birth date is [REDACTED]. Claimant is 6' tall and weighs 225 pounds. Claimant is a high school graduate and has one year of college. Claimant is able to read and write and does have basic math skills.
10. Claimant last worked December 21, 2011 doing concrete work. Claimant has also worked as a machinist.
11. Claimant alleges as disabling impairments: myocardial infarction, spinal fusion, muscle cramps, decreased energy, back pain, muscle problems, stomach problems, hip problems, and hypertension. Claimant alleges no disabling mental impairments.

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 an apartment and he has no children under 18 living with him. He was receiving Unemployment Compensation Benefits until April, 2012. Claimant has no income and does receive Food Assistance Program benefits. Claimant testified that he does have a driver's license and he drives 1-2 a week about 20 miles to the grocery store. Claimant testified that he does cook everyday and he cooks things like stir fry, vegetables, fish and chicken. Claimant does grocery shop one time per week with no help needed. Claimant testified that his wife cleans the home but he does do some dishes and that he watches television 10 hours per day or reads. Claimant testified that he can stand for 30 minutes at a time, sit for 1 hour at a time and can walk a mile at a leisurely pace. Claimant testified that he can squat, shower and dress himself, tie his shoes, and bend at the waist with some pain but he cannot touch his toes. Claimant testified that his knees are fine but he does have some aches and pains. Claimant testified that his level of pain, on a scale of 1-10, without medication is a 5 and it is always a five because he doesn't take any medication. Claimant testified that he is right handed and that his hands/arms are fine and his left leg is swollen. Claimant testified that he could pick up 100 lbs but he could carry a gallon of milk repetitively and he does drink 2 beers every other week. Claimant testified that he is able to engage in sexual relations and that on a typical day he gets up, makes coffee and watches television.

The claimant was admitted March 14, 2012 to March 17, 2012 with an acute inferior wall myocardial infarction (p 29). He had 100% occlusion of the right coronary artery and underwent emergent intervention with stenting (p 17). Cardiology follow up dated June 14, 2012 showed the claimant's blood pressure was 120/80. He had no JVD and no carotid bruits. His lungs were clear to auscultation. Heart sounds were unremarkable. He had no clubbing, cyanosis or edema. There was no focal numbness or weakness.

He was having atypical chest pains and was offered further testing (records from DDS). Cardiology note dated July 25, 2012 showed the claimant was doing well. A limited echo showed an LV ejection fraction (EF) of 55%, basically normal LV function. He was exercising for 45 minutes to an hour at home and had good exercise capacity. His examination was unremarkable. He was cleared to return to work with moderate activity (records from DDS). A consultative examination dated September 18, 2012 showed the claimant was 72" and 226.4 lbs. His BMI was 30. His blood pressure was 118/78. His neck, cardiovascular, lung and abdominal examinations were unremarkable. He had a varicose vein and a few small varicosities on the left leg. He had a long linear scar in the lumbar region. He had some limitation of motions of the lumbar spine. All other joints had fairly good range of motion. His ambulation was stable. He was very anxious. He answered questions appropriately and his speech was normal. Tone was normal in the lower extremities. Strength was 5/5 in the upper and lower extremities. Deep tendon reflexes were 2+ and symmetrical. There was no objective loss of sensation (records from DDS). On October 11, 2012, the claimant continued to have exertional chest pressure. On examination, his blood pressure was 120/70. Lungs were clear with normal breath sounds. His neck revealed no jugular vein distention and no carotid bruits. His heart revealed normal. S1 and S2 without rubs, gallops or murmurs. There was no clubbing, cyanosis or edema. There was no focal numbness or weakness (CI ex C13). Cardiac catheterization dated October 16, 2012 showed the claimant had 50% in-stent restenosis in the mid to distal right coronary artery, otherwise patent normal coronary arteries. Medical management recommended (CI ex C6-7).

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 person who is closely approaching advanced age (age 50), with a high school education and an unskilled work history who is limited to light 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

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- misapplication of manual policy or law in the hearing decision,
- typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
- 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:

