

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

IN THE MATTER OF:



Reg. No: 2013-13413
Issue No: 2009
Case No: [REDACTED]
Hearing Date: April 3, 2013
Bay 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, a telephone hearing was held on April 3, 2013. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P)?

FINDINGS OF FACT

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

1. On August 22, 2012, claimant filed an application for Medical Assistance and Retroactive Assistance benefits alleging disability.
2. On November 8, 2012, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical Vocational Rule 201.24.
3. On November 14, 2012, the department caseworker sent claimant notice that his application was denied.
4. On November 20, 2012, claimant filed a request for a hearing to contest the department's negative action.
5. On January 23, 2013, the State Hearing Review Team again denied claimant's application stating in its analysis and recommended decision: the claimant's neurological examination was within normal limits. It was noted the doctor recommended a craniotomy for cyst removal (p 10). As a result of the claimant's severe physical condition, he is restricted to performing sedentary work. He retains the capacity to lift up to 10 lbs

frequently and stand and walk for up to 2 to 8 hours. Claimant is not engaging in substantial gainful activity at this time. Claimant's severe impairments do not meet or equal any listing. Despite the impairments, he retains the capacity to perform sedentary work. Therefore, based on the claimant's vocational profile (younger individual, 11th grade education, and sedentary work history); MA-P is denied using Vocational Rule 201.24 as a guide. Retroactive MA-P benefits are denied at step 5 of the sequential evaluation; claimant retains the capacity to perform sedentary work.

6. Claimant is a 26-year-old man whose birth date is [REDACTED]. Claimant is 5'5" tall and weighs 180 pounds. Claimant attended the 12th grade and does not have a GED. Claimant is able to read and write and does have basic math skills.
7. Claimant last worked August 10, 2012 moving furniture at [REDACTED] [REDACTED] where he was employed approximately 8 years. Claimant last worked August 10, 2012 where he was involved in a motor vehicle accident on the job and currently receives \$ [REDACTED] mo in Worker's Compensation benefits.
8. Claimant alleges as disabling impairments: brain cyst, back pain, migraines, vision problems, and back spasms.

CONCLUSIONS OF LAW

The regulations governing the hearing and a appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted

or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;

- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

- 1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
- 2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).

3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant is not engaged in substantial gainful activity and is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence on the record indicates claimant testified on the record that he lives with his father and is single with no children under 18 who live with him. Claimant does receive \$ /mo in Worker's Compensation benefits and does receive Food Assistance Program benefits. Claimant testified that he does not have a driver's license and that his girlfriend takes him where he needs to go or he catches the metro transit system. Claimant testified he only fixes frozen foods and he grocery shops 1-2 times per month and his girlfriend carries the heavy things. Claimant testified that he picks up at home and he doesn't do any outside work and he watches television 2-3 hours per day and he used to fish as a hobby. Claimant testified that he can stand for 20-30 minutes at a time, sit for 20-30 minutes at a time and can walk 30-40 minutes. Claimant testified he can shower and dress himself but cannot squat, bend at the waist, tie his shoes or touch his toes. Claimant testified that his knees are fine and that his level of pain, on a scale of 1-10, without medication is a 7, and with medication is a 5-7. Claimant testified that he is right handed and that his hands/arms are fine and his legs/feet are fine and the heaviest weight he can carry is 20 lbs. Claimant testified that he does not smoke, drink or do drugs. Claimant testified that on a typical day he watches the news, drinks coffee, watches television or sits on the porch. Claimant testified that he is no longer active and that he has severe headaches and he needs to fix his brain because he has terrible headaches since the accident.

A Bay Neurosurgery Associates report dated August 15, 2012 indicates that claimant was stable and blood pressure was 96/94, pulse rate 64/min, respiratory rate 18 and afebrile. He weighed 107 lbs. He is awake, alert, and oriented times three. His cranial nerve examination II through XII is normal. His pupils are equal and reacting at 3 mm. Full range of extraocular eye movements. Facial movement is symmetrical. Facial sensation is preserved. Tongue protrudes in midline. Head turning and shoulder shrug

are equal. He is right handed. He has no drift. He has good strength, sensation, and deep tendon reflexes. Negative Hoffmann's. The left reflexes may have been a touch brisk, but there is no other evidence of long tract or upper motor neuron involvement. Examination of his legs shows a good strength and sensation. He does have pathologically brisk reflexes, some increased tone, upgoing plantar responses bilaterally. He is tender to palpation over the neck and the lower cervical spine and again, in the lower lumbar spine area. On a CAT scan and an MRI, he did not have anything acute. The CT scan of the lumbar spine was unremarkable. The CAT scan of the head showed evidence of what looks like a large arachnoid cyst arising from the ambient cistern and going superiorly up to the corpus callosum and this is confirmed on MRI scan. The neurologist indicated that the claimant would, at some point, need a surgical intervention to fenestrated drain it and possibly shut it if it recurs (p 12). An August 24, 2012 MRI of the lumbar spine indicates unremarkable MRI of the lumbar spine. There was normal vertebral alignment. The intervertebral disc spaces are well preserved. The vertebral heights marrow signal are within normal limits. The conus medularis is at the expected level of T12-L1. There is no herniation, canal stenosis or nerve root impingement. The facet joints appear within normal limits. The paravertebral soft tissues appear within normal limits (p 15). An MRI examination of the cervical spine dated August 23, 2012 indicates that there is no impingement. No mass lesion is evident. Normal spinal canal and foramina at all imaged levels (p 20). A medical examination report dated August 22, 2012 indicates claimant was 170 lbs clothed, height was 5'5" tall, BMI 28.29, temperature 97.9 °, sitting heart rate is 61 bpm regular and blood pressure at left arm while sitting is 124/78. He was well developed and well nourished, guarding low back, walks stooped over. In the musculoskeletal area, upper torso, cervical normal and thoracic spine tender left and spine, ribs and pelvis, lumbar muscles tender bilaterally. The spine had decreased extension and decreased flexion. The inspection of the skin overall had no rashes or lesions (p 77). An August 22, 2012 medical examination report indicates claimant was normal in areas except he had a back sprain and a mass in his brain per the MRI. Clinical impression was that he was improving (p 74).

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. Claimant's impairments do not meet duration. 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 a gain 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 26), with a less than high school education and an unskilled work history who is limited to sedentary work is not considered disabled.

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 benefits. The claimant

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