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

**IN THE MATTER OF**: Reg. No: 2013-19997

Issue No: 2009

Case No:

Hearing Date: March 13, 2013

**Bay County DHS** 

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

#### **HEARING DECISION**

This matter is before the undersigned Admini strative 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 March 13, 2013. Claimant per sonally appeared and testified. Claimant was represented at hearing by

### <u>ISSUE</u>

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:

- On May 18, 2012, claimant filed an application for Medical Assistance and Retroactive Medical Assistance benefits alleging disability.
- On July 17, 2012, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical Vocational Rule 202.18.
- 3. On October 9, 2012, the department caseworker sent claimant notice that his application was denied.
- 4. On December 27, 2012, claimant f iled a request for a hearing to contest the department's negative action.
- 5. On February 12, 2013, the State Hearing Revi ew Team again denie d claimant's application stating in its analysis and recommendation: claimant has a hist ory of degener ative disc disease stat us post discectomy and

laminectomy. His condition and symptoms are expected to have improved post surgically. The claimant is not curr ently eng aging in substantial gainful activity based on the informati on that is available in file. The medical evidence of record indicate sthat the claimant's condition is expected to improve within 12 months from the date of surgery. Therefore, MA-P is denied due to lack of dur ation under 20CFR416.909. Retroactive MA-P was considered in this case and is also denied.

- 6. Claimant is a 42-year-o ld man whose birth date is Claimant is 6'1" tall and weighs 220 pounds. Claimant has a GED. Claimant is able to read and write and does have basic math skills.
- 7. Claimant currently works as a home health care aide 6 hours poer week, making sure his charge takes to their medicine and does paperwork. Claimant earns \$ \_\_\_\_/mo. Claimant has also work ked in construction, masonry, drywall, and concrete.
- 8. Claimant alleges as disabling impairments: osteoarthritis since he was 13, herniated disc, 3 desiccated discs, and damage to the sciatic nerve at L5-S1. Claimant alleges no 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 oppor tunity for a hearing shall be granted to an ap plicant 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 estab lished by Title XIX of the Social Sec urity 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 substant ial 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 deter mine disability. Current work activity, severity of impairments, residual functional capacity, past wor k, 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 experienc e. 20 CFR 416.920(c).

If the impairment or combination of impair ments do not signific antly limit physica I 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 press ure, X-rays);
- (4) Diagnosis (statement of disease or injury based on it's 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 with out 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 a cceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an indiv idual can do des pite 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 regula tions require that s everal considerations be analyzed in s equential order. If disability can be ruled out at any step, analys is of the next step is <u>not</u> required. These steps are:

- 1. Does the client perf orm S ubstantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
- 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 cli ent is ineligible for MA. If

- yes, the analysis continues to Step 3. 20 CF R 416.920(c).
- 3. Does the impairment appear on a spec ial listing of impairments or are the cli ent's symptoms, signs, and laboratory findings at least eq uivalent in s everity to the set of medical findings specified for the listed impairment? If no, the analys is 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 that he lives with his m other's husband, in a house, and he is single with no children under 18 who live with him. Claimant earns \$ //mo and he does receive Food Assistance Program benefits. Cla imant does have a driver's license but he takes the bus or gets rides wherever he needs to go bec ause he has no vehicle. Claimant testified that he cooks daily and he cooks things like tv dinners and pot pies and that he grocery shops one time per month, it take s a long time but he does it with no help. Claimant testified that he does pick up the hous e, do dishes and laundry and he watches television around 2 hour s per day. Claim ant testified that he can stand for 15-20 minutes at a time, sit for 20 minutes at a time and wa lk one block and he uses a cane about 70% of the time and it is not prescribed by his doctor. Claimant testified that he can shower and dress himself, bend at the waist and tie his shoes, but he cannot squat and touch his toes. Claim ant testified that he has bone spurs in his knees and swelling. Claimant testified that his level of pain, on a scale of 1-10, without medication is a 9-10, and with m edication is a 7. Claim ant testified that he is left hand ed and that his hands/arms are fine except they are stiff and arthritic, and his legs/feet except his spinal ner ve is scarred, so he has some burning. Claimant testified the heaviest weight he can carry is 5-10 lbs and he smokes a ½ pack of cigarettes per day, his doctor's have told him to guit, and he is not in a smoking cessation program. Claimant testified that on a typical day, he wakes up, ta kes care of his bills for th gentleman he lives with, sits, stands and walks around.

An April 9, 2012 emergency room report indic ates that clai mant's vital s igns were stable, blood pressure 142/73, pulse rate 69 per minute, resp iratory rate 16, afebrile at 99%. He was awake, alert, oriented times three. He seemed to be in some discomfort. He kept the right leg flexed. Otherwise, he was awake and alert. The examination of his arms showed good strength, sensation, deep tendon reflexes. He was tender to palpation over the right SI joint. He had rest ricted straight leg r aise on the right side. Examination of his leg showed some weakne ss of the right foot in forsi and plantar flexion as well as inversion, aversion a nd extens or halluc is. Also had decreas ed sensation in the right leg in L5 and S1 di stribution, he had some what depressed ankle reflex bilaterally, pres erved knee and no evidence of myelopathy. An MRI scan of his lumbar spine done showed evidence of degenerative di sk changes at L3-L4, I4-I5 AN D 15-s1. At L3-L4 and L4-L5 there is a little bit of bulging causing some mild foraminal narrowing at L5-S1, he has what looks to be an extruded disk with severe migration on the right side causing lateral recess comp ression (p 13-14). An operative report dated April 12, 2012 indicates that claimant underwent a L5-S1 posterior lumbar laminectomy, foraminotomy and diskectomy (p 16).

At Step 2, claimant has the burden of proof of establishing that she has 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 clinic al findings that suppor t the reports of symptoms and limitations made by the claimant. There are no labor atory 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 in this case. 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 func tioning bas ed upon his reports of pain (symptoms) rather than medi cal findings. Reported symptoms are an insufficient basis upon which a finding that claimant has me the evidentiary burden of proof can be made. This Administ rative Law Judge finds t hat the medical r ecord 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/ps ychiatric e vidence in the record indicating claimant suffers severe mental limitations . There is a no mental residual functional capacity assessment in the record. There is in sufficient 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 or iented 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 evidentiar y record is insufficient to find that claimant suffers a severely restrictive mental impair ment. 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 hi s ability to perform his past relevant work. There is no evidence upon which this Admin istrative 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 capac ity is what an individual can do desp ite 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 class ify 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 t han 10 pounds at a time and occasionally lifting or carrying articles lik e 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 wor k 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 categor y 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 objecti ve 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 pr ovide 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 mont hs. 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/ps vchiatric 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 guestions 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 medical evidence contained in the file as it relates to of proportion to the objective claimant's ability to perform work. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establis h that claimant has no residual functional capacity. Clai mant is dis qualified 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 41), with a high school education and an unsk illed work history who is limited to light/sedentary work is not considered disabled.

It should be noted that claimant continues to smoke despite the fact that his doctor has told him to quit. Claimant is not in compliance with his treatment program.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial activity without good cause there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

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 conclusion sof law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance and retroactive Medical Assistance benefits. The claimant

should be able to perform a wide range of light or sedentary work even with his impairments. The department has establis hed its c ase by a preponderance of the evidence.

Accordingly, the department's decision is **AFFIRMED**.

Landis

Y. Lain

Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: March 25, 2013

Date Mailed: March 26, 2013

**NOTICE**: Administrative Hearings may or der 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 Hear ings will not orde rarehearing 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 ti mely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
  - misapplication of manual policy or law in the hearing decision,
  - typographical errors, mathematical erro r, 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

## 2013-19997/LYL

## LYL/las



