

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

IN THE MATTER OF:



Reg. No: 2013-3374
Issue No: 2009;4031
Case No: [REDACTED]
Hearing Date: January 23, 2013
Clare 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 January 23, 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) 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 May 14, 2012, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
2. On September 17, 2012, the Medical Review Team denied claimant's application stating that claimant could perform other work.
3. On September 20, 2012, the department caseworker sent claimant notice that his application was denied.
4. On October 1, 2012, claimant filed a request for a hearing to contest the department's negative action.
5. On December 3, 2012, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the medical evidence is somewhat limited, in particular to the claimant's inability/unwillingness to participate in a recently scheduled physical examination. The evidence in file does demonstrate that the claimant would reasonably retain the ability to perform sedentary exertional tasks of a simple and repetitive nature. The claimant is not currently engaging in

substantial gainful activity based on the information that is available in file . The claimant's impairments/combination of impairments does not meet/equal the intent or severity of a Social Security Administration listing. The medical evidence of record indicates that the claimant retains the capacity to perform sedentary exertional tasks of a simple and repetitive nature. The claimant has a history of less than gainful employment. As such, there is no past work for the claimant to perform, nor are there past work skills to transfer to other occupations. Therefore, based on the claimant's vocational profile (48 years old, at least a high school education and a history of less than gainful employment), MA-P is denied, 20CFR416.920 (e&g), using Vocational Rule 201.21 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. Listings 1.04, 5.06, 11.14 and 12.04/07 were considered in this determination.

6. Claimant is a 48-year-old man whose birth date is [REDACTED]. Claimant is 6'0" tall and weighs 260 pounds. Claimant attended one year of college where he studied vocational training in construction inspection. Claimant is able to read and write and does have basic math skills.
7. Claimant last worked in 2007 at [REDACTED] [REDACTED]. Claimant has also run a homeless shelter from 2000-2006. Claimant has also been an inspector at construction sites and worked at [REDACTED] [REDACTED] [REDACTED] as a manager for several years.
8. Claimant alleges as disabling impairments: degenerative disc disease, bulging disc, diverticulitis, depression, herniated disc, spinal fusion, hypertension, and diabetes.

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 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 Bridges Administrative Manual (BAM), the Bridges 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 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 and housemate and that he is married with no children under 18 living with him. Claimant has no income and does receive Food Assistance Program benefits. Claimant testified that his driver's license is expired and he takes the city bus 3-4 times per month or gets rides. Claimant testified that he does cook one time per month in the microwave and his wife grocery shops and cleans the home. Claimant testified that he usually uses the computer 3-4 hours per day and his hobbies are reading and playing games and he watches television when he can afford to rent movies. Claimant testified that he can stand 15-20 minutes at a time, can sit for 15-20 minutes at a time and can walk 100 ft. Claimant testified that he has a walker that is prescribed by his doctor and that he cannot squat, bend at the waist, touch his toes or tie his shoes and he can barely shower and dress himself. Claimant

testified that he does have arthritis in his knees and his level of pain, on a scale of 1-10, without medication is a 9 and with medication, is 6-7. Claimant testified that he is right handed and that his right hand has been broken and shakes and his legs/feet are fine but they used to have stress fractures. Claimant testified that the heaviest weight he can carry is 10 lbs and that he quit smoking cigarettes and marijuana about 4 weeks before the hearing. Claimant testified that on a typical day he goes to the bathroom, sits in his chair, goes back to bed where he reads, watches television and is usually lying down.

A psychiatric report dated October 4, 2012 indicates that claimant was diagnosed with a major depressive disorder recurrent, moderate to severe and a pain disorder associated with both psychological factors and a general medical condition. His axis V GAF= 50. Based upon the examination the claimant is likely to understand, retain and follow simple instructions. He can be expected to understand how to adjust to reasonable changes in a work environment. He reports inability to work due to chronic pain and resulting depression. These processes interact to impede his daily functioning, as well as his ability to maintain employment (p 107). His prognosis is guarded and he would be able to manage his own benefit funds (p 108). A December 17, 2011 MRI of the cervical spine indicates broad based protruding disk seen at C4-5 extending to the left and diffusely bulging disk at C5-6 and broad based protrusion at C2-3 to the right by disk spur complex. No central canal stenosis or definite neural foraminal stenosis (p 62). Claimant submitted a letter from his doctor indicating that it is imperative that he retain his insurance coverage due to his lack of financial support for the continuation of his medication coverage, medical management and his specialty care follow up which has been a significant coordination of care. At this time he is unable to perform standard work duties and probably not be part of the work force due to his degenerative disc disease with nerve impingement. A December 18, 2011 MRI of the lumbar spine indicates diffusely bulging disk at L5-S1 which along with some degenerative changes at the facet joints do narrow the neural foramina bilaterally to some mild degree. Focal protruding disk superimposed on the bulging disk and this abuts the left traversing nerve root at this level. L4-5 shows diffusely bulging disk and there is narrowing of both neural foramina on the right by the DJD and on the left by facet DJD. L3-4 shows small central protrusion of unknown significance similar to previous (p 60).

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 the 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 48), with a high school education and an unskilled work history who is limited to sedentary work is not considered disabled pursuant to Medical Vocational Rule 201.21.

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

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 and/or State Disability 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, retroactive Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of light or sedentary work even with his impairments. The department has established its case by a preponderance of the evidence.

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

Landis	<u>/s/</u> _____	Y. Lain Administrative Law Judge for Maura D. Corrigan, Director Department of Human Services
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Date Signed: February 4, 2013

Date Mailed: February 4, 2013

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

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:

2013-3374/LYL

- 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

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