

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

IN THE MATTER OF:



Reg. No.: 2013-31856
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: 5/23/13
County: St. Clair

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 5/23/13. Claimant personally appeared and testified. Claimant's wife [REDACTED] appeared and testified on his behalf. Participants on behalf of Department of Human Services (Department) included [REDACTED], Assistant Payments Worker.

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 8/17/12, claimant filed an application for Medical Assistance, State Disability Assistance and retroactive Medical Assistance benefits alleging disability.
2. On 8/24/12, the Medical Review Team denied claimant's application stating that claimant's impairments lack duration.
3. On 8/30/12, the Department caseworker sent claimant notice that his application was denied.
4. On 11/9/12, claimant filed a request for a hearing to contest the Department's negative action.

5. On 4/29/13, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The claimant was admitted twice in 8/2012 with pneumothorax. Chest tube was placed for expansion of the lungs. He had normal range of motion of the back with no tenderness. His musculoskeletal examination revealed normal range of motion, normal strength, no tenderness and no deformity. There were no focal neurological deficits observed. Speech was normal. His mood and affect were appropriate. The medical evidence of record indicates that the claimant's condition is improving or is expected to improve within 12 months from the date of onset or from the date of application. Therefore, MA-P is denied due to lack of duration under 20 CFR § 416.909. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 as the impairment(s) would not preclude all work for 90 days.
6. The hearing was held on 5/23/13. 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 5/24/13.
8. On 7/22/13, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The claimant was admitted twice in 8/2012 with pneumothorax. Chest tube was placed for expansion of the lungs. He had normal range of motion of the back with no tenderness. His musculoskeletal examination revealed normal range of motion, normal strength, no tenderness and no deformity. There were no focal neurological deficits observed. Speech was normal. His mood and affect were appropriate. A medical source statement regarding residual functional capacity dated 12/2012 and completed by a psychologist indicated the claimant had diagnoses of major depression, PTSD and panic disorder. No objective medical evidence was submitted with the reported limitations. Therefore, the new information does not significantly change or alter the previous decision. The medical evidence of record indicates that the claimant's condition is improving or is expected to improve with 12 months from the date of onset or from the date of application. Therefore, MA-P is denied due to lack of duration under 20 CFR § 416.909. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 as the impairment(s) would not preclude all work for 90 days.
9. Claimant is a [REDACTED]-year-old man whose birth date is [REDACTED]. Claimant is 6'0" tall and weighs 200 pounds. Claimant attended the 10th grade and does have a [REDACTED]. Claimant is able to read and write and does have basic math skills.
10. Claimant last worked 2007 as a [REDACTED]. Claimant also worked as a carpenter for approximately 25 years.

11. Claimant alleges as disabling impairments: pneumothorax, post-traumatic stress disorder, depression, memory loss, back pain, bad knee, shortness of breath, indigestion, fatigue, stomach pain, pain in the shoulder and chest due to a collapsed lung 3 times, as well as chronic spells and dizziness and sleeping 20 hours per day.

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 lives alone in a camper but he is selling his [REDACTED]. Claimant is married and has no children under 18 that live with him and he has no income. Claimant does receive Food Assistant Program benefits. Claimant does have a [REDACTED] and does drive 2 times per week to the grocery store which is probably about 10 miles from his house. Claimant does not cook his wife does and he does grocery shop every week even if its not needed. Claimant does cut grass with a riding mower and his hobby is watching 2 to 3 hours per day. He does use the computer a little. Claimant testified that he can stand 30 minutes at a time and sit for 10 minutes at a time. He can walk for 500 feet and said he cannot squat, bend at the waist, tie his shoes or touch his toes, but he is able to shower and dress himself. Claimant testified that he cannot engage in sexual relations as his personal doesn't work and that his level of pain on a scale from 1 to 10 without medication is 6 to 8 and with medication was 3 to 4, that he is right handed and that he hurt his right hand and hurt his ankle. The heaviest weight claimant can carry is gallon of milk and he testified that in a typical day he usually empties the cargo trailer and sleeps 20 hours a day.

The claimant was admitted 8/13/12 to 8/15/2012 with shortness of breath and left chest pain. He was found to have a pneumothorax. A chest tube was placed and kept on suction for 24 hours. He had no air leak. The chest x-ray showed full expansion of the lungs and the chest tube was removed. (p. 64). The claimant was admitted 9/22/2012 with chest discomfort and left shoulder pain (p. 99). On examination, heart sounds were unremarkable. Respirations were non-labored. He had decreased left sided breath sounds and subcutaneous emphysema along the left back with no tenderness. His musculoskeletal examination revealed normal range of motion, normal strength, no tenderness and no deformity. There were no focal neurological deficits observed. Speech was normal. His mood and affect were appropriate. X-ray showed left high volume pneumothorax (>50%). A chest tube was placed (p. 98). A medical source statement regarding residual functional capacity dated 12/5/12 showed the claimant's diagnoses included major depression, post-traumatic stress disorder (PTSD) and panic disorder. The form indicated the claimant only had bad days and the claimant is unable to work five days a week on a consistent basis. However, no objective evidence is submitted (other than the mental diagnoses) with the form.

At Step 2, claimant has the burden of proof of establishing that he 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: **post-traumatic stress disorder, depression, anxiety and mood disorder.**

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 closely approaching advanced (age [REDACTED] with a [REDACTED] 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

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**.

/s/ _____
Landis Y. Lain
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 8/26/13

Date Mailed: 8/28/13

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:
 - 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/tb

cc:

