

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No: 2013-3371  
Issue No: 2009  
Case No: [REDACTED]  
Hearing Date: January 30, 2013  
Huron 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 30, 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 May 24, 2012, claimant filed an application for Medical Assistance benefits alleging disability.
2. On September 17, 2012, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical Vocational Rule 201.28.
3. On September 20, 2012, the department caseworker sent claimant notice that his application was denied.
4. On September 28, 2012, claimant filed a request for a hearing to contest the department's negative action.
5. On November 29, 2012, the State Hearing Review Team again denied claimant's application stating in its analysis and recommended decision: the claimant's blood pressure was elevated with no reports of end organ damage. He has a body mass index of 53. The lungs had no wheezing, rales, or rhonchi. The heart was normal. There was swelling of the lower extremities. However, peripheral pulses were intact. He was limited in

range of motion of the lumbar spine and bilateral knee. Motor strength was slightly diminished with the left lower extremity. He had normal muscle tone and intact sensation. He ambulates with a wide based gait without an assist device. His diabetes is poorly controlled. The x-ray of the lumbar was normal. The mental status examination was normal. As a result of the claimant combination of severe physical and mental condition, he is restricted to performing light work. He retains the capacity to lift up to 20 lbs occasionally, 10 lbs frequently and stand and walk for up to 6 of 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 light work. Therefore, based on the claimant's vocational profile (younger individual, 10<sup>th</sup> grade education, and light work history); MA-P is denied using Vocational Rule 202.18 as a guide. Retroactive MA-P benefits are denied at step 5 of the sequential evaluation; claimant retains the capacity to perform light work.

6. Claimant is a 45-year-old man whose birth date is [REDACTED]. Claimant is 5'8" tall and weighs 360 pounds. Claimant has a GED plus two years of college where he studied business. Claimant is able to read and write and does have basic math skills.
7. Claimant last worked April 5, 2008 as a truck driver. Claimant was a truck driver for 13 years and he has also worked as a restaurant manager.
8. Claimant alleges as disabling impairments: hypertension, arthritis, diabetes mellitus, loss of strength, dizziness, back pain, decreased grip strength, obesity, enlarged heart, shortness of breath, joint pain, depression, and neuropathy.

### **CONCLUSIONS OF LAW**

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

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

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

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905

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

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

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

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

...Medical reports should include –

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

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

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

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

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

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

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

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

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

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

1. Does the client perform substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

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

The subjective and objective medical evidence on the record indicates that claimant lives with his girlfriend in a senior citizen apartment, he is single with no children under 18. Claimant has no income and does receive Food Assistance Program benefits. Claimant does have a driver's license but does not drive and takes the local bus 3 times a week to Wal-Mart and Community Mental Health for 30 minutes to an hour at a time. Claimant does cook hamburger helper and fried foods everyday. Claimant does grocery shop two times per month and he needs help carrying the groceries. Claimant testified that he does no type of chores but he does read as a hobby and he watches television 4-6 hours per day and he puts in applications 30 minutes per week. Claimant testified that he can stand for 2 hours at a time, sit for 3-4 hours at a time and can walk ½ mile. Claimant can shower and dress himself and bend at the waist but cannot squat, tie his shoes or touch his toes. Claimant testified that he has muscle spasms in his back to his lower leg and that he has knee pain and his knees pop. Claimant testified that his level of pain, on a scale of 1-10, without medication is an 8-10, and with medication is a 4. Claimant testified he is right handed and his hands lock up and his legs/feet have swelling and are dry and cracked. Claimant testified the heaviest weight he can carry is

5 lbs and he doesn't smoke, drink or take any drugs beside medications. Claimant testified that on a typical day he watches the news, fixes breakfast, showers, reads, watches television, takes a 3 hour nap, goes to social center, watches television, takes medication and goes to bed.

A September 26, 2012 medical examination indicates that the patient was cooperative in answering questions and following commands. He appeared depressed and had poor eye contact. He appeared his stated age. He was dressed in sweatpants, tee shirt and tennis shoes. His immediate, recent and remote memory was intact with normal concentration. The patient's insight and judgment were both appropriate. The patient provided good effort during exam. The patient was right handed. Blood pressure on the right arm was 153/107, pulse was 95 and regular, weight was 359.4 lbs, and height was 69" without shoes. The skin was normal. In the eyes and ears area, visual acuity in the right eye = 20/40, left eye = 20/30, with corrective lenses. Pupils were equal, round and reactive to light. The patient can hear conversational speech without limitation or aids. The neck was supple without masses. The chest had mild bronchial breath sounds without wheezes, rales or rhonchi. There was no accessory muscle use. The heart had regular rate and rhythm without enlargement. There is normal S1 and S2. The abdomen was obese. There was no organomegaly or masses. Bowel sounds were normal. In the vascular area there was no clubbing or cyanosis appreciated. There was trace edema present. There peripheral pulses were intact. Hair growth was present on the lower extremities. In the musculoskeletal area, there was no evidence of joint laxity, crepitation or effusion. Grip strength remained intact. Dexterity was unimpaired. The patient could pick up a coin, button clothing and open a door. The patient had no difficulty getting on and off the examination table, moderate difficulty heel and toe walking, moderate difficulty squatting, and moderate difficulty standing on either foot. Straight leg raising was negative. There was no paravertebral muscle spasm. Range of motion studies were normal (p 312-314). In the neurological area, cranial nerves were intact. Motor strength was diminished to 4/5 at the left lower extremity. Muscle tone was normal. Sensory was intact to light touch and pinprick. The patient walked with an antalgic wide based, guarded gait without the use of an assist device. The claimant was found to have hypertension and diabetes with mild neuropathy in the left leg but not stocking glove distribution neuropathy. His sugars had been poorly controlled. He is not on insulin management and reinstatement of treatment would be indicated. He has had weight gain, and weight loss would be essential. His blood pressure was mildly elevated and he did have findings of some mild bronchogenic breath sounds with mild lower extremity edema. There was back pain which some of this did appear to be ligamentous and myofascial. He did have some mild underlying degeneration. There were no active radicular symptoms. He did have some difficulty performing orthopedic maneuvers but this appeared to be more due to his body habitus. He does compensate with a wide based, antalgic gait and an assistive device would be helpful on uneven ground. Continued pain management and supportive care would be indicated. He was not a surgical candidate at this point (p 315). A radiology report of the lumbar spine taken September 26, 2012 indicated vertebral height and alignment are satisfactory. Disc spaces are well maintained without endplate spurring or eburnation. There is facet arthrosis at the lumbosacral level on the right. No other abnormalities affecting posterior elements or S1 joints (p 316). A psychiatric/psychological medical report dated October 1, 2012 indicates that claimant was diagnosed with major depressive disorder,

recurrent, mild and his prognosis was fair and he would be able to manage his own benefit funds. His axis V GAF = 70. His ability to relate and interact with others, including coworkers and supervisors is a bit impaired. He was occasionally tearful throughout the evaluation and his depression could affect his interpersonal relationships in the workplace. His ability to understand, recall, and complete tasks and expectations does not appear to be significantly impaired. His ability to maintain concentration does seem somewhat impaired. As a result of his emotional state he may often be distracted and his effectiveness and performance will likely be limited and slowed. He appears able to deal with normal workplace stressors appropriately (p 322). This Administrative Law Judge did consider all 323 of medical reports in making this decision.

At Step 2, claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. There is insufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant has reports of pain in multiple areas of his body; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. There are no laboratory or x-ray findings listed in the file which support claimant's contention of disability. The clinical impression is that claimant is stable. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, claimant has restricted himself from tasks associated with occupational functioning based upon his reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that claimant has met the evidentiary burden of proof can be made. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

Claimant alleges the following disabling mental impairments: depression.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers severe mental limitations. There is no mental residual functional capacity assessment in the record. There is insufficient evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. Claimant was oriented to time, person and place during the hearing. Claimant was able to answer all of the questions at the hearing and was responsive to the questions. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. For these reasons, this Administrative Law Judge finds that claimant has failed to meet his burden of proof at Step 2. Claimant must be denied benefits at this step based upon his failure to meet the evidentiary burden.

If claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of claimant's condition does not give rise to a finding that he would meet a statutory listing in the code of federal regulations.

If claimant had not already been denied at Step 2, this Administrative Law Judge would have to deny him again at Step 4 based upon his ability to perform his past relevant work. There is no evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work in which he has engaged in, in the past. Therefore, if claimant had not already been denied at Step 2, he would be denied again at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

**Sedentary work.** Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

**Light work.** Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

Claimant has submitted insufficient objective medical evidence that he lacks the residual functional capacity to perform some other less strenuous tasks than in his prior employment or that he is physically unable to do light or sedentary tasks if demanded of him. Claimant's activities of daily living do not appear to be very limited and he should be able to perform light or sedentary work even with his impairments. Claimant has failed to provide the necessary objective medical evidence to establish that he has a severe impairment or combination of impairments which prevent him from performing

any level of work for a period of 12 months. The claimant's testimony as to his limitations indicates that he should be able to perform light or sedentary work.

There is insufficient objective medical/psychiatric evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. Claimant was able to answer all the questions at the hearing and was responsive to the questions. Claimant was oriented to time, person and place during the hearing. Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to claimant's ability to perform work. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity. Claimant is disqualified from receiving disability at Step 5 based upon the fact that he has not established by objective medical evidence that he cannot perform light or sedentary work even with his impairments. Under the Medical-Vocational guidelines, a younger individual (age 45), with a more than high school education and an unskilled/semiskilled work history who is limited to light work is not considered disabled pursuant to Medical Vocational Rule 202.18.

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

Date Signed: February 11, 2013

Date Mailed: February 11, 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:
  - misapplication of manual policy or law in the hearing decision,
  - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
  - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at  
Michigan Administrative Hearings  
Reconsideration/Rehearing Request  
P. O. Box 30639  
Lansing, Michigan 48909-07322

LYL/las

cc:

