

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

IN THE MATTER OF:

[REDACTED]

Recon Reg. No.: 14-000925-RECON
Old Reg. No.: 14-000925
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: August 5, 2014
County: St. Clair

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

RECONSIDERATION HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, an in-person hearing was held on August 5, 2014, from Port Huron, Michigan. Participants on behalf of Claimant included [REDACTED], [REDACTED] and Authorized Hearings Representative [REDACTED] of [REDACTED].

The original hearing was held by Administrative Law Judge William A. Sundquist. This Reconsideration Hearing Decision and Order was completed by Administrative Law Judge Landis Y. Lain after considering the entire record.

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 July 3, 2013, Claimant, through ADVOMAS, filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.
2. On February 19, 2014, the Medical Review Team denied Claimant's application stating that claimant's impairments were nonexertional.
3. On February 25, 2014, the Department caseworker sent Claimant notice that the application was denied.

4. On April 3, 2014, L&S Associates filed a request for a hearing to contest the Department's negative action.
5. On June 11, 2014, the State Hearing Review Team again denied claimant's application.
6. On August 5, 2014, the hearing was held. At the hearing claimant waived the time periods and submitted additional medical information.
7. Claimant is a 54-year-old man whose date of birth is [REDACTED]. Claimant has a 12th grade education and last worked six years before the hearing.
8. Claimant alleges as disabling impairments: lower extremity cellulitis, liver disease, panic attack, anxiety, depression and bipolar disorder.
9. On June 25 2014, Administrative Law Judge William A. Sundquist issued a hearing decision and order stating that disability was not established and upholding the Department's denial of Claimant's application for Medical Assistance eligibility.
10. On September 5, 2014, ADVOMAS filed a request for a rehearing/reconsideration.
11. On November 3, 2014, Supervising Administrative Law Judge C. Adam Purnell approved Claimant's request for reconsideration.
12. On December 4, 2014, the reconsideration was assigned to Administrative Law Judge Landis Y. Lain.

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). Claimants 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 Rehearing and Reconsideration process is governed by the Michigan Administrative Code, Rule 400.919, *et seq.*, and applicable policy provisions articulated in the Bridges Administrative Manual (BAM), specifically BAM 600, which provide that a rehearing or reconsideration must be filed in a timely manner consistent with the statutory requirements of the particular program or programs that is the basis for the claimant's benefits application, and **may** be granted so long as the reasons for which the request is made comply with the policy and statutory requirements.

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 does 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 Claimant perform Substantial Gainful Activity (SGA)? If yes, the Claimant is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the Claimant have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the Claimant 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 Claimant'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 Claimant do the former work that he/she performed within the last 15 years? If yes, the Claimant is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the Claimant 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 Claimant are ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

This Administrative Law Judge did consider the entire record in making this decision.

At Step 1, Claimant is not engaged in substantial gainful activities. According to documentation in the file Claimant last worked six years before the hearing. Claimant is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence in the record indicates that claimant was hospitalized on [REDACTED] through [REDACTED] for cellulitis of the lower extremity. The ultrasound of the lower extremity and the CT scan of the chest was negative for pulmonary embolism. Claimant had abnormalities with severe thrombocytopenia. His blood pressure was 132/69. There was no edema of the extremities. The lab results showed his total bilirubin was slightly elevated. The ultrasound of the abdomen showed hepatosplenomegaly, pages 13 – 14. He moves all extremities appropriately, page 25. The mental status examination on December 20, 2013 noted he was alert and fully oriented. Mood and affect was normal.

A discharge summary dated [REDACTED], indicates that claimant was diagnosed with alcoholic chronic liver disease with abnormal liver enzymes and associated with

thrombocytopenia, hepatosplenomegaly, bipolar and depression with general anxiety disorder, hypothyroidism, bilateral lower extremity cellulitis in pancytopenia with leukopenia and anemia. Claimant was stable and his blood pressure fluctuated between 132/69 to 152/77. His temperature was 97.1°F, pulse 77, regular sinus rhythm and pulse oximetry was 96% on room air, client exhibit page 1.

A CT of the chest dated [REDACTED] indicates no acute pulmonary embolism, page 24. The agenda 12 2013 progress note indicates that claimant's ejection fraction was 55 to 60% and he had no evidence of cardiomyopathy, page 421. On examination his temperature was 97.1°F, pulse 73, respiratory rate 18, blood pressure 137/68. Pulse oximetry was 98% on room air. His heart rate on admission was tachycardic with ranging 118 to 126. He was back to normal and 73. The CT scan of the brain was normal. He had lacerated scalp posteriorly and stitches in the ER with head trauma and with laceration. On examination he was conscious, alert and advised to be ambulating as tolerated in the hallway. His chest was clear. Heart was regular sinus rhythm. Abdomen was soft and nontender. Positive bowel sounds. He had hepatomegaly and his extremities had no edema. He has cellulitis which was treated with cream and he was also found to have streptococcal infection and with Keflex, page 422.

A [REDACTED], medical report indicates that claimant was recommended to abstain from alcohol. The impression was a 53-year-old gentleman who presented as status post fall; history of bipolar disorder and remote EtOH with hyper bilirubinemia and mild elevation of transaminases, thrombocytopenia and anemia, page 331.

A psychiatric evaluation in the file indicates that claimant has posttraumatic stress disorder, impulse control disorder and psychosis as well as a mood disorder and bipolar does order. His axis V GAF was 45, page 469.

Claimant had an axis V GAF score of 65 in April 2013, page 91. This is considered a nonsevere mental impairment with occupational functioning.

Claimant has the burden of proof of establishing that he has a severely restrictive physical or mental impairment that had lasted or was expected to last for the duration of at least 12 months. There is insufficient objective clinical medical evidence in the record that Claimant suffered a severely restrictive physical or mental impairment. Claimant had reports of pain in multiple areas of his/her body; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by the Claimant. There are insufficient laboratory or x-ray findings listed in the file to establish disability. The clinical impression was that Claimant was **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 restricted him/herself from tasks associated with occupational functioning based upon 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. Although claimant had a chronic foot infection and had to undergo several outpatient surgeries, he at all times relevant to this case maintains the ability to perform light, unskilled or sedentary work.

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 suffered severe mental limitations. There is **no** mental residual functional capacity assessment in the record. The evidentiary record is insufficient to find that Claimant suffered a severely restrictive mental impairment. For these reasons, this Administrative Law Judge finds that Claimant has failed to meet his/her burden of proof at Step 2. Claimant must be denied benefits at this step based upon his/her 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 s/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 claimant again at Step 4 based upon the ability to perform past relevant work. There is insufficient evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work in which s/he has engaged in, in the past. Therefore, if claimant had not already been denied at Step 2, s/he would be denied again at Step 4. Claimant can probably perform his prior work as a housekeeper.

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 her 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 s/he lacks the residual functional capacity to perform some other less strenuous tasks than in her prior employment or that s/he is physically unable to do light or sedentary tasks if demanded of her. Claimant's activities of daily living do not appear to be very limited and s/he should be able to perform light or sedentary work even with her impairments. Claimant has failed to provide the necessary objective medical evidence to establish that she has a severe impairment or combination of impairments which prevent him/her from performing any level of work for a period of 12 months. The claimant's testimony as to his/her limitations indicates that s/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 s/he has not established by objective medical evidence that s/he cannot perform light or sedentary work even with his/her impairments. **Under the Medical-Vocational guidelines, an individual (age 54), with a high school education and an unskilled work history who is limited to light, unskilled or sedentary work is not considered disabled.**

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with Department policy when it determined that Claimant was not eligible to receive Medical Assistance, and/or retroactive Medical Assistance based upon disability. The Department's decision must be upheld.

RECONSIDERATION DECISION AND ORDER

Upon reconsideration, 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 or Retroactive Medical Assistance based upon disability. The Department has established its case 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: 12/11/2014

Date Mailed: 12/11/2014

NOTICE: The law provides that within 30 days of receipt of the this Decision, the Claimant may appeal it to the circuit court for the county in which he/she lives or the circuit court in Ingham County.

LYL/sw

cc:

