

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

IN THE MATTER OF:



Recon Reg. No.: 2015-26-RECON
Old Reg. No.: 2014-9618
Issue No.: 2009; 4009
Case No.: [REDACTED]
Hearing Date: April 17, 2014
County: Genesee (02)

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 April 17, 2014, from Lansing, Michigan. Participants on behalf of Claimant included Authorized Hearings Representative [REDACTED] of ADVOMAS. Participants on behalf of the Department of Human Services (Department) included Ryan Bishop.

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) 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 June 3, 2013, Claimant filed an application for Medical Assistance and retroactive Medical Assistance as well as State Disability Assistance benefits alleging disability.
2. On July 29, 2013, the Medical Review Team denied Claimant's application stating that claimant's impairments lacked duration.
3. On August 2, 2013, the Department caseworker sent Claimant notice that the application was denied.

4. On October 22, 2013, ADVOMAS filed a request for a hearing to contest the Department's negative action.
5. On January 10, 2014, the State Hearing Review Team again denied claimant's application.
6. On April 17, 2014, the hearing was held. At the hearing claimant waived the time periods and requested to submit additional medical information.
7. On June 6, 2014, the State Hearings Review Team again denied claimant's application stating that claimant's condition is improving; it would not be expected to prevent claimant from performing some level of employment for 12 months from the date of onset.
8. Claimant is a 53-year-old man whose date of birth is [REDACTED]. Claimant has a 12th grade education and last worked April 2013.
9. Claimant alleges as disabling impairments: chronic pain in the right side of the low back and right leg pain as well as cardiomegaly.
10. 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.
11. On August 28, 2014, ADVOMAS filed a request for a rehearing/reconsideration.
12. On November 3, 2014, Supervising Administrative Law Judge C. Adam Purnell approved Claimant's request for reconsideration.
13. 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 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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The State Disability Assistance program differs from the federal Medical Assistance regulations in that the durational requirement is 90 days. This means that the person's impairments must meet the SSI disability standards for 90 days in order for that person to be eligible for SDA benefits.

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 July 19, 2013. Claimant is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence in the record indicates a July 21, 2013 consultation report indicates that claimant's temperature was 37.2°C heart rate was 89 bpm, respiratory rate 16 breaths per minute, oxygen saturation on room air 98%, blood pressure 145/94. The lungs had clear vesicular breath sounds. No crepitus. No wheeze. Heart S1 and S2 no S3. No JVD. The abdomen was soft and nontender. No organomegaly. Patient had a bandage on the left foot. Peripheral pulses were intact on the right side. No pedal edema. Claimant was awake, alert and oriented times three. No focal motor or sensory deficits, 2+ DTR. Claimant was able to move all extremities. He had normal bulk and tone of his musculature. Cerebellar signs were negative on the upper extremities. The assessment was hypertension, hypokalemia, left foot trauma with fractures, status post debridement, and DVT prophylaxis, page 20. Claimant was involved in a dirt bike accident and sustained a relatively severe open fracture to his right foot as well as fractures in his right hand, page 21. A medical examination report dated August 12, 2013 indicates that claimant was 71" tall and weighed 225 pounds. He was referred to an orthopedic Dr. who indicated in the clinical impression that he was improving, pages 57 – 58.

Claimant's representative submitted additional medical information which was in existence at the time of the original determination made July 28, 2014, but not made available to the original Administrative Law Judge.

A [REDACTED] medical examination report indicates that claimant was diagnosed with cellulitis, abscess of the left foot fracture is, open reduction internal fixation. Claimant was not weight-bearing with left foot antibiotic spacer in place. He could never lift 20 pounds or more, page 1 – 2 new information. A May 6, 2014 work restriction indicates the claimant is not weight-bearing and the estimated durations additional 3 to 6 months. Claimant will require surgical procedures involved graft revision because of left foot multiple fractures and infection.

A [REDACTED] medical report indicates that claimant had a left foot open bone grafting, left first metatarsal calcaneal autograft harvesting. A February 24, 2014 report indicates that claimant had irrigation and debridement of the left foot along with hardware removal.

A [REDACTED] infectious disease consultation indicates that claimant's left foot had infected hardware with likely chronic osteomyelitis. Culture was positive for MRSA, status post the bride minutes and removal of the hardware. On physical examination if you're comfortable in no acute distress. He was awake, alert and oriented times three. His current temperature was 97.3. Heart rate 76, blood pressure 124/74. HEENT was

normal limits. The mouth was without any lesion, ulcer or thrush. The neck was supple. Lungs were clear. Heart was regular. Abdomen soft and nontender. He had a surgical dressing on the left foot. He was discharged February 26, 2014 after treatment this foot action. In April 28, 2014 medical report indicates the claimant had hardware removal and antibiotic treatment of the left foot. He is 5'11" tall and weighed 230 pounds. BMI was 32.1. His physical examination was basically normal. The musculoskeletal area had no edema, this peripheral pulses were normal. Neurological area had no focal motor or sensory deficits. DTRs are 2+ symmetric.

A [REDACTED] medical examination report indicates that claimant had irrigation and debridement, an insertion of antibiotics in the left foot which was treatment for open foot fracture dislocation chronic infections with antibiotics. Claimant was awake and alert in no acute distress. His vital signs were temperature 35.4°C, blood pressure 132/80. He was 97% on room air. Extra ocular movements were intact. Neck was supple. Lungs were clear. Heart was regular. Abdomen was soft, with positive bowel sounds. Extremities indicated left foot has surgical dressing in place. There was left lower extremity erythema and swelling.

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 maintained the ability to perform 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.

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 his impairments. Claimant has failed to provide the necessary objective medical evidence to establish that s/he 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 24), with a high school education and an unskilled work history who is limited to 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: 12/12/2014

Date Mailed: 12/15/2014

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:

