

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-001386
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: August 20, 2014
County: Ingham

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

AMENDED 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, a telephone hearing was held on August 20, 2014, from Lansing, Michigan. Participants on behalf of Claimant included Claimant and his authorized hearings representative [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED] Hearing Facilitator.

ISSUE

Whether Claimant meets the disability criteria 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 31, 2012, Claimant filed an application for Medical Assistance (MA-P) and retroactive Medical Assistance benefits alleging disability.
2. On January 24, 2014, the Medical Review Team denied Claimant's application stating that Claimant could perform other work.
3. On January 28 2014, the Department caseworker sent Claimant notice that the application was denied.
4. On April 18, 2014, Claimant filed a request for a hearing to contest the Department's negative action.
5. On June 9, 2014, the State Hearing Review Team again denied Claimant's application.

6. On June 9, 2014, the state hearing review team again denied Claimant's application stating that Claimant could perform other work pursuant to medical vocational rule 202.11.
7. On July 21, 2014, the Social Security Administration approved Claimant for (SSI) with a disability onset date of June 2013.
8. This Administrative Law Judge determined that Claimant was disabled for the retroactive Medical Assistance months of April and May 2013 based upon the medical evidence contained in the file.
9. Claimant is a [REDACTED]-year-old [REDACTED]. He was 5'5" tall and weighed 280 pounds. He attended the [REDACTED]. He can read and write a little and he can add, subtract and count money.
10. Claimant last [REDACTED].
11. Claimant alleges as disabling impairments: joint pain, asthma, abdominal pain, diabetes mellitus, morbid obesity, hand surgery, hearing problems, several surgeries and neuropathy.
12. On [REDACTED], Administrative Law Judge [REDACTED] issued a Decision and Order finding that Claimant was disabled in accordance with the Social Security Administration determination and that Claimant was eligible for SSI with a disability onset date of [REDACTED].
13. On [REDACTED] filed a request for an Amended Decision and Order because the Administrative Law Judge did not address the months of [REDACTED], as the original application for Medical Assistance was filed [REDACTED] along with a retroactive application for Medical Assistance for the months of [REDACTED].
14. On [REDACTED], the Administrative Law Judge reviewed the case and determined that the request for an Amended Hearing Decision was correct as this Administrative Law Judge erroneously did not address the retroactive months of [REDACTED].

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 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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Because of the Social Security Administration determination, it is not necessary for the Administrative Law Judge to discuss the issue of disability from June 2013 forward. PEM, Item 260.

Ongoing MA eligibility begins the first day of the month of SSI entitlement. BEM, Item 150, page 1. Some Claimants also qualify for **retroactive** (retro) MA coverage for up to three calendar months prior to SSI entitlement; see [BAM 115](#). Retro MA coverage is available back to the first day of the third calendar month prior to: For SSI, entitlement to SSI. BAM, Item 115, page 9. Therefore, the Administrative Law Judge determines that Claimant meets the definition of medically disabled in accordance with the Social Security Administration determination and for months of April and May 2013.

For the months prior to April 2013, this Administrative Law Judge must perform the sequential evaluation process.

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 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 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 has not worked since [REDACTED]. Claimant is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence on the record indicates that Claimant testified on the record that he lives with his [REDACTED] in an [REDACTED]. He has no children under 18 and no income. He receives Food Assistance Program benefits. Claimant does not have a driver's license and his [REDACTED] takes him where he needs to go. He cooks one time per day and can cook anything. He grocery shops two times per month with no help. Claimant vacuums and dusts. Claimant watches television 3 to 4 hours per day. Claimant testified he can stand for 25 minutes at a time and he can sit for 30 minutes at a time. He's able to walk 1 mile. He can squat a little. He can shower, dress, tie his shoes and touch his toes. His knees hurt because he has had two surgeries and he has arthritis in his back. He is right-handed. His hands and arms are fine his legs and feet are fine. Heaviest weight he can carry is 25 pounds.

A [REDACTED], medical examination report indicates that Claimant is 5'4" tall and weighed 274 pounds. His blood pressure was 145/82. He was obese. He had normal heart rate; no murmur. His abdomen was non-tender and had normal bowel sounds, page 33. He had shoulder pain associated with internal derangement and surgery was pending. He had no neurological deficits. He was alert and oriented with no deficits. The clinical impression is that he was stable, page 34.

A [REDACTED], clinic report indicates that Claimant had impingement right shoulder. 5/5 strength in the upper extremities; his right abduction was 100°. He had pain with crossover possible impingement signs. The skin and subcutaneous tissue was normal, page 165. The [REDACTED] that there was a slightly abnormal study and there was no evidence of radiculopathy or plexopathy. There was mild prolongation of the distal latency of the left median nerve, consistent with mild carpal tunnel syndrome. The symptoms were suggestive of mild cervical root irritation with sensory involvement only, page 104.

A [REDACTED] report indicates the Claimant was normal in all areas of examination except for the right shoulder, page 162. An [REDACTED] operative report indicates the Claimant had a laparoscopic appendectomy for acute appendicitis, page 126. A [REDACTED] report indicates that Claimant is a [REDACTED] who was 65.5 inches tall and weighed 268 pounds. His BMI was 44.08. Temperature was 98°F. His pulse was 78 bpm and regular. The blood pressure was 137/84, page 109. Claimant was in the doctor's office for evaluation of a left hand mass, page 110.

An [REDACTED] medical report from Claimant's family practice physician indicates that Claimant was 64 inches tall and weighed 270 pounds. His blood pressure was 147/88. He was diagnosed with diabetes, chronic obstructive pulmonary disease, hypertension, asthma, obesity, hyperlipidemia, glaucoma, Gastro esophageal reflux disease, back pain and knee pain. He was normal in all areas of examination except that he had some hand, shoulder and back pain, page 35. The clinical impression was that he was stable, page 36. An [REDACTED] medical examination report indicates that Claimant had a chronic anal fissure, page 46. A [REDACTED] operative report indicates that Claimant had an internal anal sphincterotomy and was taken to the recovery room in stable condition, page 48.

An [REDACTED] surgery report indicates the Claimant had a left Palm fibromatosis and excision, page 159. An [REDACTED] medical examination report indicates that Claimant had a healed anal fissure as well as external perianal skin tags, page 47.

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 insufficient laboratory or x-ray findings listed in the file. The clinical impression is 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 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. During the months of April 2012 to March 2013, Claimant did have treatment but his treatments were successful for his various ailments and therefore his condition(s) did not meet the duration of 12 months.

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, an individual (age [REDACTED] with a [REDACTED] and an unskilled work history who is limited to light 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 State Disability Assistance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Claimant meets the definition of medically disabled under the Medical Assistance Program in accordance with the Social Security Administration's disability onset date. For the months of [REDACTED], Claimant meets the definition of medically disabled under the Medical Assistance Program based upon the medical packet contained in the file. Claimant is not disabled for the months of [REDACTED]

Accordingly, the Department is **ORDERED** to initiate a review of the retroactive Medical Assistance application if it is not already done so, to determine if all other non-medical eligibility criteria are met. The Department shall inform the Claimant of the determination in writing.

If it has not already done so, the Department is **ORDERED** to open an ongoing Medical Assistance case for the Claimant effective the month of the SSI entitlement.

A medical review should be scheduled for [REDACTED]. The Department should check to see if Claimant is in current payment status or not. If the Claimant is in current payment status at the medical review no further action will be necessary. However, if the Claimant is not in current payment status at the medical review, the Department is to obtain updated application forms ([REDACTED]) and obtain updated medical records.

It is **ORDERED** that the Department shall review this case in one year from the date of this Decision and Order.



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

Date Signed: 10/7/14

Date Mailed: 10/7/14

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 receipt 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.

LYL/tb

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