

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No: 2007-11054
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 9, 2007
Kent 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 August 9, 2007. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED].

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 January 12, 2007, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On February 7, 2007, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On February 9, 2007, the department caseworker sent claimant notice that his application was denied.

(4) On March 8, 2007, claimant filed a request for a hearing to contest the department's negative action.

(5) On June 8, 2007, the State Hearing Review Team again denied claimant's application stating that it needed additional medical information in the form of a complete physical examination.

(6) The hearing was held on August 9, 2007. At the hearing, claimant waived the time periods and requested to submit the additional medical information.

(7) On September 19, 2007, additional medical information was submitted and sent to the State Hearing Review Team for further review.

(8) On October 25, 2007, the State Hearing Review Team again denied claimant's application stating that it needed additional medical information in the form of a consultative medical examination by an internist.

(9) This Administrative Law Judge sent the new SHRT decision to the department with an Interim Order requesting additional medical information on November 5, 2007.

(10) Neither the department or the claimant or the claimant's representative sent any information in the form of additional medical information and this Administrative Law Judge closed the hearing record on February 20, 2008 nearly a year and a half after the original hearing.

(11) On the date of hearing, claimant was a 47-year-old man whose birth date was [REDACTED]. Claimant was 5' 11" tall and weighed 245 pounds. Claimant recently had lost 15 pounds. Claimant was a high school graduate and attended one and a half years of college and

studied machine programming. Claimant was able to read and write and did have basic math skills.

(11) Claimant last worked in November 2003 at a machine tool company. Claimant worked as a machine operator for approximately 10 years and he also worked as a carpenter and worked in a nursery taking care of baby birds.

(12) Claimant alleges as disabling impairments: low back pain and strength deficit in the left wrist and hand.

CONCLUSIONS OF LAW

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 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).

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 had not worked since 2003. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that on [REDACTED] the claimant was alert. His mood was good. His gait was antalgic favoring his right leg. He used a cane. He had decreased range of motion (ROM) of the back. There was tenderness to palpation on the lumbar paravertebral regions and at the right sciatic notch area. Straight leg raising (SLR) was positive on the right and negative on the left. (Page 6)

A DHS-49 form indicated that claimant was in a motor vehicle accident [REDACTED] which resulted in a low back injury, pneumothorax and rib fracture. He apparently was in another motor vehicle accident in [REDACTED] in which his left forearm tendon was severed. His current diagnosis included chronic low back pain, anxiety, depression, muscle spasms in the low back, hypercholesterolemia and left wrist/hand strength deficit. The claimant had diffuse abdominal tenderness due to adhesions. He walked with a cane in the right hand due to right leg give out. He had 4/5 weakness of the right leg with decreased range of motion of the right leg. Straight leg raising was positive on the right and there was a slight decrease in sensation of the right leg. His left wrist and hand had decreased strength and grip of 4/5. His affect was flat but he was interactive. (Page 30)

A DHS-49 form in the filed dated [REDACTED] indicates that claimant's clinical impression is that he is stable. Claimant had some physical limitations and it stated that claimant needed to change between sitting, standing and walking every half an hour and that he could occasionally pick up less than 10 pounds. Claimant could use both hands for simple grasping but neither for reaching, pushing and pulling and could only use his right hand for fine manipulating because he has a tendon injury in the left forearm. Claimant had depression and anxiety and did have some problems with sustained concentration. In the general examination areas claimant was normal in all areas except he used a cane and he had some problems with his left leg.

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 least 12 months. The objective medical evidence on the record does not establish that claimant has 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. Although claimant was using a cane, his strength in his left leg was 4/5. This Administrative Law Judge cannot give the treating physician's DHS-49 weight because it is somewhat internally inconsistent. The 49 indicates that most of the examination areas are normal with the exception of the musculoskeletal examination area. There were no laboratory or x-ray findings listed on the DHS-49 or in the file that indicate that claimant has a severe problem with his leg. The statement by claimant's physician that claimant experiences tenderness in his musculature is the only support given for the extreme physical limitations listed on the second page which indicates that claimant can only occasionally lift less than 10 pounds or use his extremities for other repetitive actions including even simple grasping with his left hand. 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, the DHS-49 has restricted claimant from tasks associated with occupational functioning based on the claimant's 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. There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers mental limitations resulting from his reportedly

depressed state. Claimant testified that he didn't have any mental impairment, but he was depressed because he couldn't do anything. 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 as failed to meet his burden of proof at Step 2. Claimant must be denied benefits at this step based 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. This Administrative Law Judge finds that claimant can probably work at a nursery taking care of baby birds even with his impairments. Therefore, claimant is disqualified from receiving disability at Step 4 because he has not established that his severe impairments keep him from performing any of his prior work.

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 any prior employment or that he is physically unable to do light or sedentary tasks if demanded of him. Claimant testified on the record that he does have a driver's license and does drive every three days and usually drives 20 miles one way. Claimant testified that he cooks for himself one time per day and cooks pasta, chili and meatloaf. Claimant testified that he does grocery shop every two week and that he does need help carrying the groceries. Claimant testified that he cleans his room, the bathroom and puts dishes in the dishwasher. Claimant testified that his hobby is taking care of his two parrots. Claimant testified that he can walk 100 yards with a cane, stand for 15 to 20

minutes at a time and sit for a half an hour at a time. Claimant testified that he is able to shower and dress himself and squat but has problems getting up. Claimant testified that he can bend slightly at the waist but cannot touch his toes but he is able to tie his shoes if he bring his foot up. Claimant testified that the heaviest weight he can carry 10 pounds and he can't carry that far. Claimant testified that he is right handed and he has major difficulties grabbing with his left hand. Claimant testified that his level of pain on a scale from 1 to 10 without medication is a 9 and with medication is a 6 to 6-1/2. Claimant testified that he does smoke a pack of cigarettes per day and his doctor has told him to quit but he is not in a smoking cessation program. Claimant testified that in a typical day he takes two hours to get up and stretch and then he cleans himself up and takes care of his basic needs and watches TV and reads. This Administrative Law Judge finds that claimant's testimony as to his limitations indicates that he should be able to perform light or sedentary work.

Claimant did testify that he does smoke a pack of cigarettes per day and his doctor has told him to quit. Claimant is not in compliance with his treatment program.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial gainful activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

Claimant testified on the record that his is depressed because he can't do anything.

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 contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. In addition, 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, his 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.

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. PEM, Item 261, page 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The claimant

should be able to perform a wide range of light or sedentary work even with his impairments.

The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.

/s/

Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: March 16, 2009

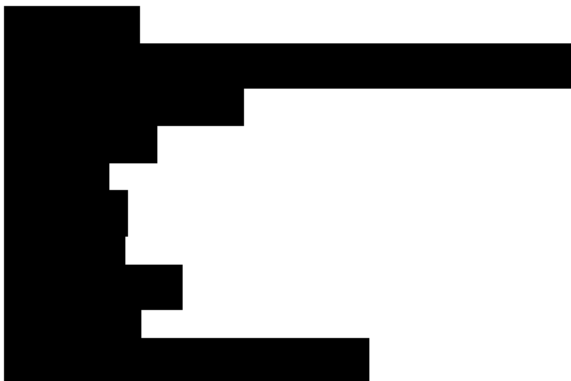
Date Mailed: March 17, 2009

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.

LYL/vmc

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