

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: 2007-29197

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

January 15, 2008

Ogemaw County DHS

ADMINISTRATIVE LAW JUDGE: Jana A. Bachman

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on January 15, 2009.

ISSUE

Whether the Department of Human Services (department) properly determined that claimant has not established disability for purposes of Medical Assistance (MA) 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 12, 2007, claimant applied for MA and SDA. Claimant submitted medical records for department consideration.

- (2) July 17, 2007, the Medical Review Team (MRT) denied claimant's application.

Department Exhibit A.

- (3) July 20, 2007, the department sent claimant written notice that his application was denied.

- (4) August 24, 2007, the department received claimant's timely request for hearing.

- (5) December 5, 2007, the State Hearing Review Team (SHRT) denied claimant's application. Department Exhibit B.

- (6) January, 15, 2008, the telephone hearing was held. The record was not sufficient for a determination and an interim order was issued to obtain intellectual functioning/cognitive functioning assessment for claimant. The report was obtained and the medical packet was resubmitted to the SHRT. July 16, 2008, the SHRT again denied claimant's application. SHRT Decision, 7-16-08.

- (7) Claimant asserts disability based on impairments caused by right arm pain and lifting restrictions.

- (8) Claimant testified at hearing. Claimant is 27 years old, 6'1" tall, and weighs 338 pounds. Claimant completed high school and is able to read, write, and perform basic math. Claimant does not have a driver's license. Claimant cares for his needs at home.

- (9) Claimant's past relevant employment has been doing cleaning.

- (10) March 17, 2008, claimant underwent a mental status examination and cognitive testing. A report was prepared that indicates Axis I diagnosis of developmental arithmetic disorder. GAF was assessed at 60. The report indicates that claimant exhibited adequate contact with reality and fair self-esteem and insight. Stream of mental activity was spontaneous. Responses were generally logical and reasonable. Claimant denied experiencing hallucination,

suicidal ideation, and compulsive/obsessive behavior. Mood and affect appeared normal. There was no appearance of significant anxiety tenseness, anger, suspiciousness, or fear. Memory, information, abstract thinking, and judgment appeared within normal limits. Psychological testing revealed a Verbal IQ score of 91, a Performance IQ score of 89, and a Full Scale IQ score of 89. Working memory index was 78 while processing speed index was 79. Reading score was within normal range. Math score was 60 with ranking of .8 in a grade level of the third grade. Doctor completed a Mental Residual Functional Capacity Assessment (FIA-49E) indicating that claimant was not significantly limited in 17 of 20 areas of functioning. Claimant is moderately limited in three areas of functioning including the fact that he doesn't have a driver's license. Department Exhibit A, pgs 406-413.

(11) June 25, 2003, claimant suffered an accident causing a displaced commutative radial head and neck fracture. Claimant underwent surgery. May 5, 2006, x-rays of the right elbow were performed and a report was prepared that indicates postoperative changes about the proximal radius. There is an internal fixation plate secured by multiple screws with associated deformity of bone. There are degenerative changes present. There has been no significant change since prior study of October 26, 2005. Department Exhibit A, pg 104. April 24, 2006, claimant visited his physician indicating he has numbness in the right upper extremity. Physical exam was performed and notes were prepared that indicate the following: blood pressure 130/96, general exam appears within normal limits with the exception of positive Tinel's sign on the right side with somewhat of a decreased grip strength on the right as well. Assessment is stated as right wrist pain and paresthesias, probable carpal tunnel syndrome on that side; hypertension; status post cholecystectomy; and dyslipidemia. Department Exhibit A, pgs 138-139. June 30, 2006, claimant again visited his physician who notes that claimant has some pain with active and

passive motion of his right elbow. Assessment is stated as pain, right elbow; obesity. Department Exhibit A, pg 129.

(12) May 30, 2006, claimant underwent abdominal and chest x-rays and a report was prepared that indicates enlarged heart; pulmonary vasculature is unremarkable; lungs are clear; nonspecific bowel gas pattern; no pathologic air-fluid levels or free air. Department Exhibit A, pg 171.

(13) January 2, 2007, claimant underwent an EKG and a report was prepared that states the following impression: normal sinus rhythm; counterclockwise rotation; intra-ventricular conduction delay; T wave inversion over the inferior lead suggestive of acute coronary syndrome or a non ST elevation MI even with age noted; and compared to prior EKG the T wave inversion is new. Department Exhibit A, pg 81. A second EKG was performed and a report was prepared that indicates similar findings with the exception of improvement in the ST-T waves but persisting intra-ventricular conduction delay. Department Exhibit A, pg 83. April 7, 2007, an EKG was performed and a report was prepared that indicates normal sinus rhythm and EKG within normal limits. Department Exhibit A, pg 193. May 20, 2007 EKG revealed normal sinus rhythm; nonspecific ST segment changes and EKG within normal limits. Department Exhibit A, pg 206. Chest x-ray that date revealed no radiographic evidence of active heart disease. Department Exhibit A, pg 207. On or about June 7, 2007, claimant underwent left heart catheterization, selective coronary arteriogram, left ventriculogram, and right foraminal arteriogram. Impression was no evidence of severe epicardial coronary disease; normal left ventricular systolic function; and hypertension, poorly controlled. Department Exhibit A, pgs 8-9. An echo/color flow study was performed on May 29, 2007 that revealed left ventricular enlargement and left ventricular hypertrophy; cardiac function appears to be mildly impaired,

visual estimated ejection fraction is calculated at 55 percent, no evidence of segmental wall motion abnormalities; no pulmonary regurgitation, aortic valve appears to be grossly normal with no stenosis or insufficiency, no mitral regurgitation or significant gradient, no tricuspid regurgitation; no pericardial effusion; mild dilated aortic root dimension, normal left atrial volume index. Department Exhibit A, pgs 89-90.

(14) May 29, 2007, claimant presented to hospital complaining of chest pain. Claimant was examined and objective medical testing was performed. Discharge diagnoses were chest pain, hypertension, uncontrolled diabetes, hyperlipidemia, obesity, and metabolic syndrome. A SPECT was performed and a report was prepared that indicates the following conclusion: inferior wall ischemia and left ventricular wall enlargement. Department Exhibit A, pgs 371, 167, 168, 169, 233, and 234.

(15) June 15, 2007, claimant underwent x-rays of the lumbar and thoracic spine. A report was prepared that indicates claimant has mild degenerative changes in his lumbar spine and mild degenerative changes in his thoracic spine. Department Exhibit A, pg 216.

September 7, 2007, CT scan of the right shoulder and cervical spine were performed and a report was prepared that states no acute findings in the right shoulder and mild right C5-6 and C6-7 neuroforaminal stenosis and diffused mild subcentimeter adenopathy. Department Exhibit A, pg 379.

(16) October 29, 2007, claimant's family physician completed a Medical Examination Report (FIA-49) following physical exam that took place on October 11, 2007. Doctor opines that claimant is able to occasionally lift ten pounds, stand and/or walk less than two hours in an eight-hour workday and sit less than six hours in an eight-hour workday. Claimant is not able to

perform repetitive actions with his upper extremities due to right arm pain and weakness.

Department Exhibit A, pgs 402-403.

CONCLUSIONS OF LAW

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).

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).

If an individual fails to cooperate by appearing for a physical or mental examination by a certain date without good cause, there will not be a finding of disability. 20 CFR 416.994(b)(4)(ii).

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 so is not disqualified from receiving disability at Step 1.

At Step 2, the objective medical evidence of record indicates that claimant has a math calculation disorder. Intellectual functioning and emotional functioning were within normal limits. Claimant had an accident in 2003 that resulted in fractured head and neck. Claimant underwent surgery and appears to have fully recovered. On an unknown date, claimant injured his elbow and underwent surgery. In 2006, he had screws and a plate in his elbow with some degenerative changes and bone deformity. Claimant reports weakness and poor grip on the right. The objective medical evidence of record indicates that claimant has mild heart disease. Ejection fraction is 53 percent to 55 percent. Claimant's cardiologist does not indicate that claimant has severe limitations due to this condition. Claimant has uncontrolled diabetes, hypertension, and

obesity. The record does not indicate claimant has severe impairments or limitations due to these conditions. Claimant's physician opines that claimant is not able to sit six hours in an eight-hour workday and not able to stand/walk two hours in an eight-hour workday. Claimant is not able to perform repetitive actions with his upper extremities due to right arm pain. The objective medical evidence of record is consistent with claimant's inability to perform repetitive actions with his right upper extremity. Claimant's obesity may make it difficult for him to stand for long periods of time. Claimant's spine has mild degenerative changes. The objective medical evidence of record does not indicate a medical reason why claimant does not have the ability to sit for six hours in an eight-hour workday. Accordingly, the sit restriction must be given lesser legal weight. Finding of Fact 10-12.

At Step 2, the objective medical evidence of record is not sufficient to establish that claimant has severe impairments that have lasted or are expected to last 12 months or more and prevent employment at any job for 12 months or more. Therefore, claimant is disqualified from receiving disability at Step 2.

At Step 3, claimant's impairments do not rise to the level necessary to be specifically disabling by law.

At Step 4, claimant's past relevant employment has been doing cleaning. See discussion at Step 2 above. Finding of Fact #9-16. Due to claimant's chronic right elbow pain, it appears that it would be difficult for him to perform the repetitive actions required doing cleaning work.

At Step 4, the objective medical evidence of record is sufficient to establish that claimant has functional impairments that prevent claimant for a period of 12 months or more, from engaging in a full range of duties required by claimant's past relevant employment. Therefore, claimant is not disqualified from receiving disability at Step 4.

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).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

At Step 5, see discussion at Step 2 above. Finding of Fact #10-16.

At Step 5, the objective medical evidence of record is sufficient to establish that claimant retains the residual functional capacity to perform at least sedentary work activities. Considering claimant's Vocational Profile (younger individual, high school graduate, and history of unskilled work) and relying on Vocational Rule 201.27, claimant is not disabled. Therefore, claimant is disqualified from receiving disability at Step 5.

Claimant does not meet the federal statutory requirements to qualify for disability. Therefore, claimant does not qualify for Medical Assistance based on disability and the department properly denied claimant's application.

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).

2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

Sec. 604 (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

- (a) Recipient of Supplemental Security Income, Social Security or Medical Assistance due to disability or 65 years of age or older.
 - (b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.
 - (c) A resident of an adult foster care facility, a home for the aged, a county infirmary, or a substance abuse treatment center.
 - (d) A person receiving 30-day post-residential substance abuse treatment.
 - (e) A person diagnosed as having Acquired Immunodeficiency syndrome (AIDs).
 - (f) A person receiving special education services through the local intermediate school district.
 - (g) A caretaker of a disabled person as defined in subdivision (a), (b), (e), or (f) above.
- (2) Applicants for and recipients of the State Disability Assistance program shall be considered needy if they:
- (a) Meet the same asset test as is applied to applicants for the Family Independence Program.
 - (b) Have a monthly budgetable income that is less than the payment standard.
- (3) Except for a person described in subsection (1)(c) or (d), a person is not disabled for purposes of this section if his or her drug addiction or alcoholism is a contributing factor material to the determination of disability. 'Material to the determination of disability' means that, if the person stopped using drugs or alcohol, his or her remaining physical or mental limitations would not be disabling. If his or her remaining physical or mental limitations would be disabling, then the drug addiction or alcoholism is not material to the determination of disability and the person may receive State Disability Assistance. Such a person must actively

participate in a substance abuse treatment program, and the assistance must be paid to a third party or through vendor payments. For purposes of this section, substance abuse treatment includes receipt of inpatient or outpatient services or participation in Alcoholics Anonymous or a similar program. 1995 PA 156, Sec. 605.

- (4) A refugee or asylee who loses his or her eligibility for the federal Supplemental Security Income program by virtue of exceeding the maximum time limit for eligibility as delineated in Section 402 of Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 U.S.C. 1612, and who otherwise meets the eligibility criteria under this section shall be eligible to receive benefits under the State Disability Assistance program.

After careful examination of the record and for reasons discussed at Steps 2, 3, and 5, above, the Administrative Law Judge decides that claimant does not have severe impairments that prevent work for 90 days or more. Therefore, claimant does not qualify for SDA based on disability and the department properly denied his application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant has not established disability for Medical Assistance and State Disability Assistance.

Accordingly, the department's action is, hereby, UPHELD.

/s/ _____
Jana A. Bachman
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: November 17, 2009

Date Mailed: November 18, 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 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.

JAB/db

cc:

