

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: 2007-17695

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

December 6, 2007

Iron 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 December 6, 2007. Claimant personally appeared and testified.

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 March 20, 2007, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On June 26, 2007, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On June 29, 2007, the department caseworker sent claimant notice that his application was denied.

(4) On July 5, 2007, claimant filed a request for a hearing to contest the department's negative action.

(5) On November 7, 2007, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the claimant has significant visual loss but it does not meet listing level with OD correcting to 20/100. It was also noted that claimant was able to sign application papers without assistance or difficulty. (Page 23) At the exam on [REDACTED] there was no indication that claimant was not able to see to get around. He apparently left the exam and was able to walk down the hall without any noted difficulties seeing. There was a question about his ability to ambulate without the cane however. The claimant would not attempt to cooperate in attempting orthopedic maneuvers. However, there was no loss of muscle motor strength and no indication of any muscle atrophy or wasting. There was no significant neurological abnormalities, muscle atrophy or wasting. There were no significant neurological abnormalities noted. The claimant was only partially credible based on the objective evidence. The claimant would be able to do medium work that does not require fine visual acuity. The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform medium work that does not require fine visual acuity. The claimant reported no relevant work history. Therefore, based on the claimant's vocational profile of a younger individual, 12th grade education and no relevant work history reported, MA-P is denied using Vocational Rules 202.20 and 203.28 as guides. Retroactive MA-P was considered in this case and is also denied. SDA is

denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days.

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

(7) On December 11, 2007, additional medical information was submitted and sent to the State Hearing Review Team.

(8) On January 21, 2008, the State Hearing Review Team requested additional medical information based upon the fact that claimant reported worsening vision. As of May 30, 2007 the visual deficits do not equal a listing. (Page 16) Therefore, the State Hearing Review Team requested additional medical information.

(9) Additional medical information was not submitted by February 20, 2009 and the record was closed. The Administrative Law Judge will make the decision based upon the approximately 1,000 pages of information contained in the file.

(10) On the date of hearing, claimant was a 48-year-old man whose birth date was [REDACTED]. Claimant was 5' 10" tall and weighs 140 pounds. Claimant was a high school graduate and was in special education in the learning lab. Claimant was able to read and write and did have basic math skills except for his division was not strong.

(11) Claimant last worked in 1988. Claimant was receiving SSI from [REDACTED] to [REDACTED] and [REDACTED] through [REDACTED] he was incarcerated for [REDACTED].

(12) Claimant alleges as disabling impairments: legal blindness, sciatic nerve problems, back surgeries, right rotator cuff problems, degenerative disc disease, right shoulder obstruction, incontinence, hernia, hemorrhoids and blackouts.

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 1998. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence in the record indicates that on exam on [REDACTED], the claimant's mental status was normal. He displayed some inconsistent behaviors. His vision was 20/200 in each eye without corrective lenses. Breath sounds were clear to auscultation and symmetrical. Heart sounds were normal. There was no evidence of joint laxity, crepitus or effusion. Grip and pinch strength remained intact. Dexterity was unimpaired. He had no difficulty getting on and off the exam table. He would not attempt heel and toe walking,

squatting and arising or performing the tandem walk without the use of a cane. He complained of pain in his back with hip motions. (Page 6) He actually had full range of motion of the spine and joints. (Pages 7-8) Motor strength was totally normal. Sensory functions were intact with the exception of no sensation in the posterior right thigh and lateral right foot and ankle. Reflexes were intact and symmetrical. The claimant would not attempt to balance or ambulate without the use of his cane. It was not apparent that the claimant had significant balance difficulties but examination was limited due to lack of cooperation by the claimant. In the exam room he appeared to lean on heavily. (Page 8) As he ambulated down the hall unaware he was being observed, he demonstrated that he was able to balance on the left foot as he lifted the cane and his right foot at the same time and walked in a swifter and less antalgic manner. Straight leg raise was negative and he was seated in a supine position. Reflexes were equal bilaterally. (Page 9) Visual exam dated [REDACTED] showed the claimant had keratonconus in both the right and left eye. With lenses his vision was 20/100 OD and 20/200 OS. (Page 15)

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 12 months.

There is insufficient objective medical/psychiatric evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Although claimant did walk with a cane during his doctors' appointments, the doctor indicated the claimant did not have demonstratable balance problems and was able to walk faster and with a less antalgic gait after he left the doctor's office and was being observed when he did not know it. There is no clinical impression that the claimant is deteriorating and there is no impression that the claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition.

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 or mental impairment. Claimant did testify on the record that he does not have any 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.

Claimant does not have any work history which he listed. Claimant did testify that he collects cans and gets money from family. If claimant had not already been denied at Step 2, this Administrative Law Judge would deny him at Step 4 and determine that claimant is able to perform light or sedentary work. Claimant is able to collect cans for money which means that he can move around and does have mobility. Therefore, this Administrative Law Judge finds that claimant can probably perform light work and would be disqualified from receiving disability 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 no 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. The claimant's testimony as to his limitations indicates he should be able to perform light or sedentary work. Claimant testified that he doesn't drive because of his vision but he is able to cook by pouring cereal in a bowl,

microwaving and eating peanut butter sandwiches. Claimant testified that he goes to get a gallon of milk but other people do his grocery shopping because he does not have transportation. Claimant testified that his hobby is listening to music and that he can walk 2 ½ blocks with a cane, stand for 15 minutes and sit for 45 minutes at a time. Claimant can squat within limited ability and he is able to shower and dress himself but doesn't tie his shoes. Claimant testified that he can carry 10 pounds and that he is right handed and that his level of pain on a scale from 1 to 10 without medication is a 7 to an 8 and with medication is a 3 to a 4. Claimant testified that in a typical day he gets up and gets something to eat, lays down for awhile and then gets up and puts the dog out and eats meals. Claimant testified that he received a favorable SSI decision in [REDACTED] but it stopped when he went to prison.

Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence as it relates to claimant's ability to perform work. Claimant has no mental impairments and was oriented to time, person and place during the hearing. This Administrative Law Judge finds that 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. Therefore, based on the claimant's vocational profile of a younger individual, 12th grade education and no relevant work history, MA-P is denied using Vocational Rules 202.20 and 203.28 as guides. Retroactive MA-P was considered in this case and is also denied.

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 16, 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.

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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

cc:

