

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: 2007-17882
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
December 20, 2007
Kalkaska 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 20, 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 May 18, 2007, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On July 25, 2007, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On July 30, 2007, the department caseworker sent claimant notice that his application was denied.

(4) On August 7, 2007, claimant filed a request for a hearing to contest the department's negative action.

(5) On November 19, 2007, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the medicals in the file does not document a severely restrictive impairment. While he may have difficulty with constant overhead reaching and overhead work as was required in cutting trees he should be capable of performing most any work that does not require working overhead. 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 a wide range of heavy work. Therefore, based on the claimant's vocational profile of a younger individual, high school education and a history of skilled work, MA-P is denied using Vocational Rule 203.29 as a guide. 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) On December 20, 2007, the hearing was held. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(7) This Administrative Law Judge left the record open for a substantial amount of time and no new medical information was sent to the department.

(8) On February 20, 2009, the record was closed and this Administrative Law Judge will proceed to make a decision based upon the medical information and testimony of the claimant that is contained in the file.

(9) Claimant, on the date of hearing, was a 39-year-old man whose birth date was [REDACTED]. Claimant was 5' 8" tall and weighs 160 pounds. Claimant was a high school graduate and was able to read and write and did have basic math skills. Claimant had been in special education in school.

(10) Claimant alleges as disabling impairments: shoulder and back problems.

(11) An SOLQ in the file indicates that the Social Security Administration denied claimant's application for SSI on [REDACTED].

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 approximately three years before the hearing. Claimant was not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that consultative examination of [REDACTED] was within normal limits with only mild limitations of movement in the shoulders and cervical spine. A left shoulder x-ray was normal. (Page 20) A MRI of the scapula and shoulder of [REDACTED] showed abnormal signal in the infraspinatus muscle. (Page 6) A radiology report of the left shoulder of [REDACTED] indicates that [REDACTED] stated: I see no acute traumatic or intrinsic osseous abnormalities. The joint space is well maintained without discernible spurring, eburnation or erosive change along opposing surfaces. I cannot identify a joint effusion or a loose body. Surrounding soft tissues are intact. (Page 14) A physical examination in the file located at pages 17 through 20 indicates that the claimant was cooperative throughout the examination. The claimant can hear conversational speech without limitation. There was normal intensity, clarity and sustainability of speech without stutter. The claimant walks with a normal gait. An assistive device is not used. His vital signs – his blood pressure in his right arm was 130/86, blood pressure in the left arm was 132/90. Pulse equals 70 and regular. Respiration was 12. Weight was 158 pounds. Height was 68” without shoes. His skin – claimant was known to have a two centimeter scar over the right lower quadrant of the abdomen. Eyes – visual acuity right eye was 20/15, left eye was 20/20 without corrective lenses. There was no scleral icterus or conjunctival pallor. Pupils were equal and reactive to light. The fundi appeared normal. The neck was supple with no masses or thyromegaly. No bruits were appeared over the carotid arteries. There was no jugular venous distention. The chest AP diameter was grossly normal. Breath sounds were of a normal intensity. There were no wheezes,

rales or rhonchi. Accessory muscles were not used. In the heart, the doctor could not appreciate a clip or murmur. There was no S3 or S4. The heart did not appear to be enlarged. No orthopnea is noted. Abdomen contour was normal. There no organomegaly or masses. There was no evidence of ascites. Bowel sounds were normal. In the vascular, there was no clubbing or cyanosis detected. The peripheral pulses were intact. The feet were warm and normal color. There were no femoral bruits. There was no peripheral edema. Varicose veins were not seen. There was no stasis dermatitis or ulcerations. In the musculoskeletal, there was no joint instability, enlargement or effusion. Grip strength remained intact. Dexterity was unimpaired. The claimant could pick up a coin, button clothing and open a door. The claimant had no difficulty getting on and off the examination table. No difficulty heel and toe walking and no difficulty squatting. Range of motion of the joints was normal and full in all areas.

The conclusion of the medical report was that the claimant reported a history of discomfort involving several joints. On examination today he did report tenderness in movement in his shoulders. There was also tenderness in the movement of the cervical and lumbar spine. It was especially in the lower back and neck. The doctor could not appreciate any evidence of nerve root impingement. There does not appear to be evidence of active synovitis or joint atrophy involving the shoulders. Grip strength in the hands appeared well maintained. The claimant was able to pick up a coin, button clothing and open a door with either hand. He was known to walk normally and did not require the use of an assistive device. His station was stable.

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. The objective medical evidence in the record indicates that claimant has not established that he has a severe impairment or combination of impairments which have lasted or

will last the durational requirement of 12 months or more. Claimant is, therefore, disqualified from receiving disability at Step 2 because he has not established that he has a severe impairment or combination of impairments that have lasted the durational requirement of 12 months or that have kept him from working for 12 months or more. However, this Administrative Law Judge will continue to proceed through the sequential evaluation process for the sake of argument since Step 2 is a *de minimus* standard.

If claimant had not been denied at Step 2, the analysis would proceed to Step 3. Claimant's impairments do not rise to the level necessary to be specifically listed as disabling as a matter of law. Claimant's condition does not give rise to a finding that he would meet a statutory listing in the code of federal regulations.

At Step 4, claimant testified on the record that he lives alone in a camper and is single with no children under 18. Claimant testified that his neighbor's drive him places because he doesn't have a driver's license because he had an OUIL. Claimant testified that he cooks two times a day and cooks burgers on the grill and that he can grocery shop when he gets a ride and does it one time per month with no help. Claimant testified that he cleans his trailer by sweeping the floor and making the bed and that he helps his neighbor fix cars. Claimant testified that his hobby is hunting and he went two weeks before this hearing for deer season. Claimant testified that his physical impairments are that he has neck and back pain and degenerative disc disease and a separated shoulder, and muscles in his back hurt from a [REDACTED] motor vehicle accident where he broke his lumbar when he was hit by a car. Claimant testified that he also had a [REDACTED] motor vehicle accident. Claimant testified that he is learning disabled and he had speech classes in school and that his condition had worsened. Claimant testified that he can walk a mile, stand for four hours and sit for four hours at time and is able to squat, bend at the waist, shower and dress

himself, tie his shoes and touch his toes. Claimant testified that the heaviest weight he can carry is 20 pounds and that he is right handed. Claimant testified that his level of pain on a scale from 1 to 10 without medication is a 9 and with medication is a 5. Claimant testified that he does smoke a pack of cigarettes per day.

Claimant testified that in a typical day he gets up and makes coffee and takes his medications and then eats and piddles around outside. He checks the mail and watches television and eats lunch and talks on the phone to friends and then has dinner and goes to bed.

If claimant had not already been denied at Step 2, this Administrative Law Judge would probably have to deny him again at Step 4 based upon his ability to perform his past relevant work as a foreman for a tree trimming business or as a person who collects scrap. This Administrative Law Judge will not disqualify claimant at Step 4, based upon the fact that tree trimming does require strenuous work and if claimant's shoulders are hurting then he probably should not do overhead 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 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 as well as medium work even with his impairments.

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).

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 at least light or sedentary work.

Claimant testified on the record that he does not have any mental impairment except that he is learning disabled.

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. The 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. For the record, claimant did testify that he does receive substantial relief from his pain medication. 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, a younger individual (age 39 or 40),

with a high school education and an unskilled work history who is limited to light work is not considered disabled.

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 11, 2009

Date Mailed: March 11, 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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