

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: 2008-7325

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 13, 2008

Ottawa 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 March 13, 2008. 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 June 28, 2007, claimant filed an application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On October 23, 2007, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On October 24, 2007, the department caseworker sent claimant notice that his application was denied.

(4) On October 25, 2007, claimant filed a request for a hearing to contest the department's negative action.

(5) On February 6, 2008, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the claimant has a severe mental or physical impairment but a review of the medical evidence of record shows that the alleged impairments do not meet or equal a Social Security listing. The objective medical evidence in the file demonstrates the claimant's physical residual capacity to perform a wide range of unskilled medium work. 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 unskilled medium work. Therefore, based on the claimant's vocational profile of a younger individual, high school graduate and an unskilled work history, MA-P is denied using Vocational Rule 203.28 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) The hearing was held on March 13, 2008. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(7) Additional medical information was not submitted and on April 14, 2008, the department caseworker sent this Administrative Law Judge a memo stating this matter was heard on March 13, 2008 and the record was left open until April 13, 2008 to allow the claimant to provide additional medical information. The medical information has not been provided.

(8) This Administrative Law Judge has waited approximately a year to allow the claimant to provide the medical information which he did not do so. The Administrative Law Judge hereby closes the record on February 20, 2009.

(9) Claimant was on the date of hearing a 48 year-old man whose birth date is [REDACTED]. Claimant is 5' 9" tall and weighs 175 pounds. Claimant is a high school graduate and has one year of college where he studied business. Claimant is able to read and write and does have basic math skills.

(10) Claimant last worked April 2007 for [REDACTED] in sanitation cleaning meat in a processing plant. Claimant also drove a truck for two years and worked construction on and off for approximately 12 years.

(11) Claimant alleges as disabling impairments: hypertension, mental illness, foot injury, schizoaffective disorder and a bipolar disorder.

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 has not worked since April 2007. Therefore, claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that in [REDACTED], after ingesting too much cocaine, the claimant suffered a heart attack. He underwent an angioplasty with two stent placements. (Pages 52-53) In [REDACTED] the claimant twisted his right foot while working. In [REDACTED] he was seen by a podiatrist. At that time an x-ray of the right foot showed degenerative changes from an old fracture. His foot was tender. Support for the foot was recommended to alleviate discomfort. (Page 135) In [REDACTED] after ingesting too much cocaine he was seen by psychiatry and his mental status exam was normal once his medical problems were treated. He reported a long history of polysubstance abuse. He was diagnosed with bipolar disorder and cocaine abuse. (Pages 85-86) Outpatient [REDACTED] notes from [REDACTED] to [REDACTED] reflect treatment for bipolar disorder and polysubstance abuse. His mental status examinations were unremarkable. (Pages 108-129)

At Step 2, claimant has the burden of proof of establishing that he has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. There is insufficient objective medical/psychiatric evidence in the record that claimant suffers a severely restrictive physical or mental impairment. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a

deteriorating condition. Claimant did have an acute injury to his foot but there is no evidence that claimant's injury has lasted more than a year or kept him from working for more than a year. In short, claimant has restricted himself from tasks associated with occupational functioning based upon his reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that claimant has met the evidentiary burden of proof can be made. This Administrative Law Judge finds the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

There is insufficient objective psychiatric evidence in the record indicating claimant suffers mental limitations resulting from his reportedly depressed, bipolar state. A DHS form in the file indicates that claimant does have some mental limitations in the form of following directions, comprehension and memory and has limitations in his short-term and immediate recall as of [REDACTED]; however, that was just after he had had a heart attack induced by an overdose of cocaine. Claimant was able to answer all the questions at the hearing and was responsive to the questions. Therefore, this Administrative Law Judge finds that the evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. For these reasons, this Administrative Law Judge finds that claimant has failed to meet his burden of proof at Step 2. Claimant must be denied benefits at this step based upon his failure to meet the evidentiary burden.

If claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of claimant's condition does not give rise to a finding that he would meet a statutory listing in the code of federal regulations.

If claimant had not already been denied at Step 2, this Administrative Law Judge would have to deny him again at Step 4 based upon his ability to continue his past relevant work.

Claimant's past relevant work was light working in sanitation cleaning a processing plant and driving a truck. Claimant had an acute myocardial infarction based upon his cocaine overdose. He does not have any residual heart problems. Therefore, this Administrative Law Judge finds that claimant should be able to perform his prior work even with his impairments. Therefore, claimant is also denied 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 insufficient objective medical/psychiatric 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 testified on the record that he does take the bus two times a week and rides the bus for 15 minutes. He does cook two times per week and cooks things like hamburgers and soup. Claimant does grocery shop two times a month and rides the cart. Claimant testified he does clean his own home by sweeping and vacuuming and that he can walk a half a block, stand for 5 minutes and sit for 20 minutes at a time. Claimant testified that he does have prescribed crutches and that he can't squat but he can bend at the waist and tie his shoes and touch his toes. Claimant testified that the heaviest weight he can carry is a gallon of milk and he is right handed and his hands and arms are fine. Claimant testified that his level of pain on a scale from 1 to 10 without medication is an 8 to a 9 and medication is a 2. When claimant was asked if he used any drugs besides medication he stated no and that he only had smoked marijuana in the past. He did not mention that he took a cocaine overdose at any time during the hearing. Claimant testified that during a typical day he watches television, gets up at 8:00 a.m. and friends take him to the house with them and then he comes home at 10:00 p.m.

Claimant's testimony as to his limitations indicates that he should be able to at least perform sedentary work even with his impairments.

Claimant's testimony and the information contained in the file indicate that claimant has a history of alcohol and drug abuse. Applicable hearing is the Drug Abuse and Alcohol (DA&A) Legislation, Public Law 104-121, Section 105(b)(1), 110 STAT. 853 (42 USC 423(d)(2)(C), 1382c(a)(3)(J). The law indicates that individuals are not eligible and/or are not disabled where drug addiction or alcoholism is a contributing factor material to the determination of disability. After careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that even if claimant were to be determined to be disabled under the other factors in this case, claimant does not meet the statutory disability definition under the authority of the DA&A Legislation because his substance abuse was material to his alleged impairments and alleged disability.

Claimant testified that he does have a schizoaffective, bipolar disorder and depression.

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, based upon claimant's medical reports, it is documented that he had cocaine abuse which would have contributed to his physical or any alleged mental problems. 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. In addition, claimant did testify that he does receive some substantial relief from his pain medication. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity. Claimant is disqualified from receiving disability at Step 5 based upon the fact that he has not established by objective medical evidence that he cannot perform light or sedentary work even with his impairments. Therefore, based on the claimant's vocational profile of a younger individual, high school graduate and an unskilled work history, MA-P is denied using Vocational Rule 203.28 as a guide. 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 11, 2009

Date Mailed: March 12, 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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