

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: 2008-9186
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 19, 2008
Gogebic 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 June 19, 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 September 26, 2007, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On November 2, 2007, the Medical Review Team denied claimant's application stating that claimant's impairments were non-exertional.

(3) On November 7, 2007, the department caseworker sent claimant notice that his application was denied.

(4) On November 13, 2007, claimant filed a request for a hearing to contest the department's negative action.

(5) On March 4, 2008, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the claimant has evidence of some anxiety and depression. He initially responded well to medication. Continued adjustments to medications and continued therapy along with abstinence of alcohol should improve his condition. The evidence in the file does not demonstrate any other impairment that would pose a significant limitation. The medical evidence of record indicates that the claimant's condition is improving or is expected to improve within 12 months from the date of onset or from the date of surgery. Therefore, MA-P is denied due to lack of duration under 20 CFR 416.909. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 as the impairment would not preclude all work for 90 days.

(6) The hearing was held on June 19, 2008. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(7) The Administrative Law Judge left the record open to allow for the submission of additional medical information, however, no new information was submitted and the Administrative Law Judge closed the file on February 20, 2009.

(8) On the date of hearing, claimant was a 50-year-old man whose birth date was [REDACTED]. Claimant was 6' 1" tall and weighed 202 pounds. Claimant was a high school graduate and was able to read and write and does have basic math skills.

(9) Claimant last worked in May 2007 for [REDACTED] as a product inspector.

Claimant has also worked as a laborer and worked at a ski hill putting people on the chairs.

(12) Claimant alleges as disabling impairments: back pain, hypertension, depression, bipolar disorder and anxiety as well as substance abuse.

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 is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that [REDACTED] records indicate that claimant was seen originally in [REDACTED] after he was arrested for domestic

assault against his son. He reports being depressed since his wife died several years earlier. He also indicated having drunk one week ago (by some reports he drinks daily to the point of intoxication). Follow-up records indicate he initially had good response to medication especially Cymbalta, however, he later reported that Cymbalta was causing him some nausea so he quit taking it. (Pages 14 and 17) [REDACTED] report dated [REDACTED] states that claimant was anxious, depressed, oriented x3 and more verbal with poor eye contact. He was not suicidal or homicidal. A medical report dated [REDACTED] indicated the claimant was 6'1", 190 pounds with a blood pressure of 168/84, pulse of 88 and respiration of 22. Claimant has a history of hypertension. Claimant had no respiratory problems but had been a smoker for 30 years. He had no desire to quit at that time. Claimant's eyes and vision were adequate with corrective lenses and his ears and hearing were adequate and could hear normal tones. His speech was very pressured and appeared to have difficulty concentrating and talked with his hands in answering questions. Claimant had his own teeth in adequate repair. He was alert and oriented x3 and denied migraine headaches and seizures.

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. In the instant case, there is insufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant did testify that he does have pain in his back but there is no corresponding clinical findings in the record that support the reports of symptoms and limitations made by the claimant. There are mental status examinations in the file that claimant has always been oriented x3 and able to answer questions and responsive to all questions. Claimant has been depressed but has not indicated any mental limitations based upon his depression. There is no evidence in the record

which addresses claimant's physical condition. He had a physical examination on [REDACTED] which indicated that he was alert and oriented and somewhat anxious. His blood pressure was 160/100. His weight was 188 pounds and his pulse was 76. His HEENT was normal, his lungs were clear. His heart had a sinus rhythm with no murmur. His abdomen was soft and tender and neurologically he was essentially normal. (Page 42) A medical report of [REDACTED] also indicates that claimant did have some tenderness over his mid thoracic spine and back but that all other areas were basically normal. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical or mental impairment. There is no evidence in the record indicating that claimant suffers mental limitations resulting from his reportedly depressed state. There is no mental residual functional capacity assessment in the record. The evidentiary record is insufficient to find claimant suffers a severely restrictive mental impairment. For these reasons, the 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 his failure to meet the evidentiary burden.

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

If claimant had not already been denied at Step 2, this Administrative Law Judge would have to deny him again at Step 4 based upon his ability to perform his past relevant work. This Administrative Law Judge finds that claimant can probably be a product inspector even with his impairments. Claimant testified on the record that he can walk two to three blocks at a time and can stand for ten minutes and sit for a half an hour at a time. Claimant testified that he can shower and dress himself, squat, bend at the waist, tie his shoes but not touch his toes. Claimant

testified that the heaviest weight he can carry is 20 pounds and that he is right handed and there is nothing wrong with his hands and arms. Claimant testified that he does have some pain from his back and his legs and that his level of pain on a scale from 1 to 10 without medication is a 7 and he doesn't take any medication for pain. Claimant testified that he does smoke a pack of cigarettes per day and his doctor has told him to quit and he is not in a smoking cessation program. Claimant testified that he doesn't have a driver's license because he had a DUI and his friend or son takes him where he needs to go. Claimant testified that he does cook two or three times per week and cooks things like roast and sandwiches. Claimant does grocery shop two times per month with no help but he does need a ride and that he does clean his house and do things like vacuuming, dishes and laundry. He did state that vacuuming was difficult. This Administrative Law Judge finds that claimant's impairments are not so severe that they limit him from performing his activities of daily living and, therefore, claimant is disqualified from receiving disability at Step 4 as claimant should be able to perform his prior work even with his impairments.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

Claimant has submitted insufficient objective medical evidence that he lacks the residual functional capacity to perform some other less strenuous tasks than in any prior employment or that he is physically unable to do light or sedentary tasks if demanded of him. Claimant's activities of daily living do not appear to be very limited and he should be able to perform light or sedentary work even with his impairments. The 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 working at 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 light or sedentary work.

Claimant testified on the record that he does continue to smoke despite the fact that his doctor has told him to quit smoking. Claimant is not in compliance with his treatment program.

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

Claimant testified on the record that he has depression and anxiety and a bipolar disorder. Claimant testified that his bipolar disorder is about one year old and that he is getting more depressed since his wife died.

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. Claimant was able to answer all the questions at the hearing and was responsive to all 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 as it relates to the 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. Claimant is disqualified from receiving disability at Step 5 based upon the fact that he has not established by objective medical evidence that he cannot perform light or sedentary work even with his impairments.

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

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of light or sedentary work even with his impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.

/s/

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

Date Signed: March 16, 2009

Date Mailed: March 17, 2009

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's

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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.

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