

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: 2008-15484

Issue No: 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

August 20, 2008

Allegan 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 August 20, 2008.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for 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 December 13, 2007, claimant filed an application for State Disability Assistance benefits alleging disability.
- (2) On January 15, 2008, the Medical Review Team denied claimant's application.

(3) On January 18, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On February 14, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On May 8, 2008, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: given his obesity with a BMI of 47.8 and arthritis in his left ankle, he may difficulty with constant stooping and crouching, and constant stair climbing. Otherwise, he should be capable of performing a wide range of medium work. Medical opinion was considered in light of CFR 416.927. The evidence in the file does not demonstrate any other impairment that would pose a significant limitation. 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 medium work. Therefore, based on the claimant's vocational profile of a younger individual, high school education and a history of unskilled work, he is denied benefits using Vocational Rule 203.28 as a guide. 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 August 20, 2008. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(7) Claimant did not submit additional medical information and contacted the Administrative Hearings Division March 26, 2009 to inquire about his hearing decision.

(8) The Administrative Law Judge indicated that she was still waiting for additional medical information and on March 27, 2009, claimant indicated he had no more medical information to submit and the record was closed.

(9) On the date of hearing, claimant was a 37-year-old man whose birth date was [REDACTED]. Claimant was 5' 10" tall and weighed 327 pounds. Claimant recently gained 40 to 50 pounds. Claimant is a high school graduate and is able to read and write at the 4th grade level and does have basic math skills.

(10) Claimant testified that he last worked in 2006 as a paper boy. Claimant has also worked at temporary agencies doing assembly and parking and also worked in wrapping and shipping for [REDACTED] and also worked for [REDACTED]

(11) Claimant alleges as disabling impairments: an inverted left foot and left ankle pain.

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 State Disability Assistance program differs from the federal medical assistance regulations in that the duration requirement is 90 days. This means that the person's impairments must meet the Social Security disability standards for 90 days in order for that person to be eligible for SDA benefits.

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 2006. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that treatment notes of [REDACTED] reported that a CT scan of claimant's left ankle demonstrated osteoarthritis but was otherwise negative. He was reported to have a Valgus type defect which puts additional pressure on his walking. Treatment note of [REDACTED] indicated that the claimant was 5' 10" tall and weighed 333 pounds. A [REDACTED] ankle examination indicates that claimant had considerable soft tissue swelling about the ankle. The ankle mortise appeared well maintained. There was no evidence of a fracture. There were small degenerative spurs present about the posterior aspect of the calcaneus. No joint effusion was identified. There was no acute boney abnormality seen. (Page 36 of the medical reports) A chest x-ray was done on [REDACTED] which indicated that the boney thorax was intact. There was no acute infiltrate, mass or effusion. There was no significant cardio pulmonary abnormality seen. (Page 32) On [REDACTED] there was a thoracoscopic guided left talofibular joint injection which was successful and it was noted that claimant was not having any particular pain immediately prior to the injection. (Page 29)

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 3 months in this case because claimant is only requesting State Disability Assistance benefits. There is insufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant has reports of pain in his ankle; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. Claimant did testify that he does have sleep apnea and

hypertension and left ankle pain as well as depression. However, there is no laboratory or x-ray finding listed in the file which indicates that claimant's impairments are severe. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. 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 that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers from 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 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 perform his past relevant work as a cashier or order maker and manager at [REDACTED], or as a person who wraps and ships windows or did assembly and parking or as a paper boy. This Administrative Law Judge finds that

claimant has submitted insufficient objective medical evidence in the file which indicates that he has a severe impairment which keeps him from doing any of his prior work. Therefore, claimant is disqualified from receiving disability at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process for the sake of argument 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 even with his impairments. 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. Claimant did testify on the record that he takes the bus one time per week to counseling and that he lives at a mission and he is able to cook for himself and can cook things like meatloaf or eggs. Claimant testified that he does grocery shop every two weeks and that he sweeps and mops the mission. Claimant testified that he can walk a half a block, stand for 20 minutes and can sit for 2 hours at a time. Claimant testified he is able to shower and dress himself and bend at the waist but not squat because he has knee problems. Claimant testified that he can tie his shoes but not touch his toes. Claimant stated that he can carry 20 pounds and that he is right handed and that his hands and arms are fine except that he has tendonitis in right arm and needs a brace. Claimant testified 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 5. Claimant testified that in a typical day he gets up and eats breakfast, has devotions and then prays and does his washing up. Claimant testified that he is in class from 8:40 a.m. to 11:30 a.m. and then lunch and then from 12:00 p.m. to 4:00 p.m. he is working and

training and then dinner. Claimant testified he goes to chapel and Bible study, that he does his homework or sleeps and then watches television on the weekends from 5:00 p.m. to 10:00 p.m.

The claimant did testify on the record that he does have a mental disorder in the form of 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. Claimant testified that he did have a suicide attempt in [REDACTED] where he stabbed himself and was hospitalized for 10 days. However, there is insufficient objective medical/psychiatric evidence contained in the file that claimant has such severe depression that he cannot perform any tasks. 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/psychiatric evidence on the record does not establish that claimant has no residual functional capacity based upon a mental or physical impairment. Claimant is disqualified from receiving disability at Step 5. Under the Medical-Vocational guidelines, a younger individual (age 39), 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 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: April 10, 2009

Date Mailed: April 10, 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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