

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: 2008-19995

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

January 20, 2009

Mecosta 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 January 20, 2009. 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 April 18, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On April 22, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On April 24, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On May 12, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On June 27, 2008, the State Hearing Review Team again denied claimant's application stating that it had insufficient evidence and requested additional medical information.

(6) The hearing was held on January 20, 2009. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(7) Additional medical information was submitted and sent to the State Hearing Review Team on February 10, 2009.

(8) On February 19, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work, can perform medium work per 20 CFR 416.967(c), unskilled work per 20 CFR 416.968(a) pursuant to Medical-Vocational Rule 203.25.

(9) Claimant is a 39-year-old man whose birth date is [REDACTED]. Claimant is 5' 6' tall and weighs 145 pounds. Claimant attended the 9th grade and has no GED. Claimant testified that he is able to read and write and does have basic math skills but he is learning disabled.

(10) Claimant last worked in 2004 running a printing press. Claimant was a painter for 10 years and changing oil for 6 months and landscaping for 6 months.

(11) Claimant alleges as disabling impairments: neck pain, depression, degenerative disc disease in the neck, hepatitis C, bipolar disorder, personality disorder, antisocial personality disorder, and suicidal ideation.

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 2004. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant has a history of hepatitis C and on [REDACTED] there was an echogenic lesion within the right lobe of the liver. It appeared to be a hemangioma. (Page 486) At another exam on [REDACTED], claimant appeared well nourished for his age. He was not in acute distress. His sclerae were anicteric; his oral mucousa was moist; there were no oropharyngeal lesions. His neck was supple and there was no thyromegaly, cervical or supraclavicular adenopathy. His chest was clear bilaterally. Heart had

regular rate and rhythm. His abdomen was full, soft, non-tender; bowel sounds were present and they were normal; there was no hepatosplenomegaly or ascites. A rectal examination was deferred. In the extremities there was no edema or cirrhosis. (Page 483) At the exam on [REDACTED] claimant was 163 pounds. He was 66 inches tall. His blood pressure was 110/66 and his pulse was 88 and regular. He was neatly groomed and casually dressed. He established and maintained appropriate eye contact. His speech was spontaneous and normally productive without blocking, looseness of associations, ideas of reference, pressure of speech or flight of ideas. His mood was dysphoric, dysthymic and concerned with mood congruent affect. Concentration and psychomotor activities were within normal limits without any evidence of abnormal involuntary movements. There was no evidence of alterations in thought process or thought content, suicidal ideation or homicidal ideation.

Cervical spine x-ray of [REDACTED] reported a loss of disc space height, degenerative changes and slight kyphosis of C5-6. (Page 488) Emergency room note of [REDACTED] reported the claimant to have neck and back pain after chopping wood five days earlier. (Page 462) EMG and nerve conduction study of [REDACTED] reported the claimant to have mild left carpal tunnel syndrome, left ulnar mononeuropathy. (Page 284) Treatment note of [REDACTED] indicated that claimant had back and neck pain. He was found to have muscle tenderness and assessed with chronic pain syndrome. (Page 273) Hospital records of [REDACTED] reported a partial physical exam to be within normal limits. He was noted to have a normal gait. He was admitted due to an overdose of Klonopin. He was feeling hopeless and helpless. The claimant was successfully treated for 8 days and was released with a diagnosis of mood disorder not other specified and cocaine abuse in remission. GAF was estimated at 55. (Page 452)

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 clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant testified that he has pain in his neck and his back, but there are no corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. Claimant testified that he can walk a mile and a half, stand for two hours, and sit for a half an hour at a time. Claimant testified that he can shower and dress himself, squat, bend at the waist, and tie his shoes but not touch his toes. Claimant testified that he can carry 10 to 15 pounds and that he is right handed and that he has carpal tunnel syndrome. Claimant testified that his level of pain on a scale from 1 to 10 without medication is an 8 and with medication is a 5. Claimant testified that he does smoke two cigarettes per day and that he quit smoking crack cocaine approximately four years ago. Claimant testified that in a typical day he watches television all day long.

There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury 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 psychiatric evidence in the record indicating claimant suffers mental limitations resulting from his reportedly depressed state. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. Claimant was

oriented to time, person and place during the hearing and was able to answer all the questions at the hearing without hesitation and was responsive to the questions. 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.

In 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 work. Claimant worked at [REDACTED] at a printing press, and also changing oil and doing landscaping. This Administrative Law Judge finds that claimant should be able to work running a printing press or changing oil even with his impairments. Claimant testified that he stopped working in 2004 because he didn't get along with his employer. Claimant did not stop working because he had some sort of physical or mental impairment. Therefore, if claimant had not already been denied at Step 2, he would be denied again 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 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. The claimant's testimony as to his limitations indicates that he should be able to perform light or sedentary work even with his impairments. Claimant's activities of daily living do not appear to be very limited.

Claimant testified on the record that he does have a bipolar disorder, antisocial personality disorder, personality disorder, and he is suicidal at times.

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, he was a cocaine addict which would have contributed to his mental and any alleged physical problems. 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. Claimant did testify that he does receive some 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. Under the Medical-Vocational guidelines, a younger individual (age 39), with a less than high school education and an unskilled work history who is limited to light work is not considered disabled pursuant to Medical-Vocational Rule 202.02.

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 26, 2009

Date Mailed: March 27, 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.

2008-19995/LYL

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:

