

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: 2008-28802
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 12, 2009
Arenac 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 February 12, 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 June 18, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On August 8, 2008, the Medical Review Team denied claimant's application stating that claimant's impairments lacked duration.

(3) On August 13, 2008, the department caseworker sent claimant notice that his application was denied.

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

(5) On September 2, 2008, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: Additional information is needed and a medical opinion was considered in light of CFR 416.927. The evidence in the file does not demonstrate any other impairment that would pose significant limitations and a complete physical and mental status examination should be conducted.

(6) The hearing was held on February 12, 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 May 29, 2009.

(8) On June 5, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The claimant did appear mildly deconditioned. He has some limitation of motion but no significant neurological abnormalities. Grip and dexterity were preserved. Gait was relatively stable. The claimant continues to drink and was depressed. However, there was no evidence of a significant thought disorder. Public Law 104-121 is cited due to the materiality of drug and alcohol abuse. 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 simple, unskilled, light work. In lieu of detailed work history, the claimant will be returned to other work. Therefore, based on the claimant's vocational profile of closely approaching

advanced at 50, limited education and a history of unskilled work, MA-P is denied using Vocational Rule 202.10 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.

(9) Claimant is a 50-year-old man whose birth date is [REDACTED]. Claimant is 5' 8" tall and weighs 168 pounds. Claimant attended the 11th grade and does not have a GED. Claimant does not read well, but is able to add and subtract and count money.

(10) Claimant last worked in 2005 as a self-employed maintenance man and cook on a boat. Claimant has also worked as a carpenter, and worked as a laborer building doors and as a cook and a manager at a restaurant.

(11) Claimant alleges as disabling impairments: cardio obstructive pulmonary disease (COPD), back surgery, sleep apnea, shortness of breath, a drug overdose and depression.

(12) It should be noted that the Social Security Administration did deny claimant's application for Social Security Disability in September 2008.

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 2005. Therefore, claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that psychological testing of [REDACTED] indicates IQ score of 71 (verbal), 87 (performance), and 77 (full scale). (Page 149) Hospital records of [REDACTED] indicated that claimant was treated for respiratory failure. He was noted to have a blood alcohol level of 212 with findings positive of cannabinoids and benzodiazepines. This was thought to be the result of a suicide attempt. At the time of discharge, his physical condition was back to baseline. (Page 69)

A counselor note of [REDACTED], indicates the claimant was sad, teary, depressed and anxious. He admitted to taking all his pills and drinking although he denied that he attempted suicide. (Page 17) Psychiatric examination report of [REDACTED], reported findings from the treating counselor. (Page 15)

Hospital records of [REDACTED] indicate that claimant was treated with a lumbar fusion at L5-S1. (Page 52) The neurosurgeon's medical examination report based on the last visit in [REDACTED] reported that claimant was still healing from surgery.

On examination in [REDACTED], the claimant's lungs revealed prolongation of expiratory phase, mild bronchial breath sounds but no accessory muscle use. There was no clubbing, cyanosis or edema. He had diminished range of motion of his back and his right shoulder. Grip

strength and dexterity were preserved. He did have some synovial thickening and mild degenerative changes in his hands. He had tenderness over the left sacroiliac joint. His gait was relatively stable. Motor strength and tone were normal. Reflexes were 3+ and symmetrical. Sensory was intact. (New Information) A mental status dated [REDACTED] showed the claimant was still using alcohol. His hygiene was good. Speech was appropriate and articulation was clear. He was spontaneous, reasonable and logical. There were no psychotic symptoms. His mood was moderately to strongly depressed. His general affect was mostly flat. He did not appear to be significantly anxious, tense, angry, suspicious or fearful. His diagnosis included major depression, single episode, moderate; developmental reading disorder; developmental spelling disorder; and borderline intellectual functioning. (New Information)

A physical examination on [REDACTED], indicates that claimant's blood pressure was 100/58, his pulse was 62 and regular, respiratory rate was 16. Weight was 172 pounds and height was 67" without shoes. There was a 10-inch incision over the anterior abdominal area and there was a 6-inch incision over the dorsolumbar spine. Visual acuity in the right eye was 20/40 and visual acuity in the left eye was 20/40 without corrective lenses. Pupils were equal, round and reactive to light. The claimant could hear conversational speech without limitation or aids. The neck was supple without masses. There was prolongation of the expiratory phase. There were mild bronchial breath sounds. There was no accessory muscle use. There was regular rate and rhythm in the heart without enlargement and there was a normal S1 and S2. There was no organomegaly or masses in the abdomen and bowel sounds were normal. There was no clubbing, cyanosis or edema detected in the vascular system and peripheral pulses were intact. The claimant appeared to have mild to moderate persistent emphysema, but he did not appear to be actively short of breath. He was on steroid inhalers and tobacco cessation would be helpful.

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. Although claimant did recently have surgery, he has recovered and does not have a severe impairment at the current time. Claimant's impairments lack duration. 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, the 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 or combination of impairments.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers mental limitations resulting from his reportedly depressed state. The evidentiary record indicates that claimant is not mentally limited in most areas and was determined to be markedly limited in the ability to carry out detailed instructions, the ability to maintain attention and concentration for extended periods, the ability to perform activities within a schedule, maintain regular attendance and be punctual with customary tolerances and the ability to complete a normal workday and worksheet without interruptions from psychologically-based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods. Claimant was able to answer all the questions at the hearing and was responsive to the questions.

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 heavy use of alcohol as well as tobacco abuse which would have contributed to his physical and any alleged mental problems.

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 past relevant work. Claimant testified that he worked as a cook in a restaurant and well as laminating doors and as worked in maintenance and as a cook on a boat. This Administrative Law Judge finds that claimant could probably perform his prior work even with his impairments. There is insufficient objective medical/psychiatric evidence upon which this Administrative Law Judge could base a finding

that claimant is unable to perform work that he has engaged in, in the past. Therefore, if claimant had not already been denied at Step 2, he would again be denied 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 work 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/psychiatric 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 light or sedentary work.

The Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) is material to a person's disability and when benefits will or will not be approved. The regulations require the disability analysis be completed prior to a determination of whether a person's drug and alcohol use is material. It is only when a person meets the disability criterion, as set forth in the regulations, that the issue of materiality becomes relevant. In such cases, the regulations require a sixth step to determine the materiality of DAA to a person's disability.

When the record contains evidence of DAA, a determination must be made whether or not the person would continue to be disabled if the individual stopped using drugs or alcohol. The trier of fact must determine what, if any, of the physical or mental limitations would remain if the person were to stop the use of the drugs or alcohol and whether any of these remaining limitations would be disabling.

In the instant case, this Administrative Law Judge determined that claimant does not meet the disability criteria for Medical Assistance and State Disability Assistance, but even if he did, after a careful review of the credible and substantial evidence on the whole record, claimant does not meet the statutory disability definition under the authority of the DAA legislation because his substance abuse is material to his alleged impairments and alleged disability.

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. 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 at least 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: July 20, 2009


Date Mailed: July 20, 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.

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