

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: 2008-29282

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 19, 2009

Ionia 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 19, 2009. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED].

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 May 29, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On July 21, 2008, the Medical Review Team denied claimant's application stating that claimant could perform prior work.

(3) On July 22, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On August 15, 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 that claimant is capable of performing his past work as a cashier which was light work.

(6) The hearing was held on February 19, 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 April 7, 2009.

(8) On April 13, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing past work as a cashier or as a cleaner and stating in its comments that the claimant's representative indicated that the Disability Determination Service failed to send the claimant for psychological testing for IQs. Under the program guidelines IQ testing would not be pertinent as the claimant has relevant work history and there is no indication of mental retardation. His treating physician's note indicates that he is able to articulate and his fund of knowledge was intact. Claimant was able to drive. IQ testing is not warranted. A letter from claimant's physician date [REDACTED] indicated that claimant

has a prosthetic left eye. His right eye is corrected to 20/40 minus. The claimant continues to drive but his doctor recommends he only drive in the daylight. The claimant's most recent physical exam in the file showed he had normal sensory and motor findings. His mental status exam showed he was able to articulate well with normal speech/language and normal coherence. Thought content was normal with ability to perform basic computations and apply abstract reasoning. Associations were intact. Fund of knowledge was intact and attention span and ability to concentrate was normal. (Page 5) The claimant is able to at least simple, unskilled medium work. He is able to return to one of his past jobs as gas station cashier or cleaner as he performed them.

(9) Claimant is a 57-year-old man whose birth date is [REDACTED]. Claimant is 6' tall and weighs 273 pounds. Claimant recently lost 20 pounds. Claimant testified that he attended the first grade and can read a very little bit and can write his name. Claimant testified that he is able to add and subtract and count money but not do division or multiplication. Claimant testified that he was in special education in school.

(10) Claimant last worked May 22, 2008 at [REDACTED] as a cashier. Claimant also worked as a maintenance person and was fired for too many mistakes. Claimant also worked construction for 5 to 7 years and he worked for a cleaning service cleaning buildings.

(11) Claimant alleges as disabling impairments: diabetes mellitus, hypertension, an enlarged heart, eyesight problems, arthritis in his feet, a heart murmur, a prosthetic eye, and depression.

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 May 2008. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that on [REDACTED] a medical report indicates that claimant's height was 71.25 inches. His weight was 259 pounds. His pulse was 76. His respirations were 16. His blood pressure was 124/64 and his BMI was 35.91. Claimant's general appearance was cooperative and he was oriented x3. Claimant was well nourished and well developed and he had normal posture and he was well hydrated and his voice was normal. Claimant's skin was normal. His HEENT head was normal and his eye was normal. His neurological mental status was normal. His sensory was normal. His motor was normal.

Examination of related systems revealed normal gait and station. Mental status examination performed with findings that claimant was able to articulate well with normal speech/language, rate, volume and coherence. Thought content was normal with the ability to perform basic computations and apply abstract reasoning, associations were intact. No evidence of hallucinations, delusions, obsessions or homicidal/suicidal ideation, demonstrates appropriate judgment and insight. He displayed the ability to recall recent and remote events and fund of knowledge was intact. His attention span and ability to concentrate were normal. Claimant's assessment was diabetes mellitus type 2, erectile dysfunction, malignant essential hypertension, hyperlipidemia, diabetic neuropathy and obesity. (Pages 4-5) A medical examination report at Page 64 of the medical reports indicates that claimant had examination areas which were basically normal except that he had prosthesis in the left eye and he had some pain. Claimant was 71.25" tall and weighed 259 pounds and his blood pressure was 124/64 and he is right hand dominant. At Page 65 the clinical impression was that claimant's condition was deteriorating and that he could stand and/or walk less than two hours in an eight hour day but sit less than six hours in an eight hour day. Claimant could carry occasionally 10 pounds or less, but never carry 20 pounds or more. Claimant did not need an assistive device for ambulation and could not operate foot and leg controls with either feet or legs and could only do simple grasping and fine manipulating with his upper extremities but not reaching, pushing and pulling. Claimant also has obstructive sleep apnea and uses a C-PAP machine at night. A medical report dated [REDACTED] indicates that claimant's blood pressure was 103/61 with a heart rate of 60 beats per minute. His weight was 258 pounds and his height was 71.25 inches yielding a BMI of 38. Oxygen saturation breathing room air was 99 percent. Self-administered Epworth Sleepiness

Scale score was elevated at 19 and finds he that does see himself as being sleepy in numerous situations he might find himself in during the course of the day. He was awake and alert and in no acute distress. His head was normocephalic and atraumatic. Skin was warm and dry without evidence of a rash. There was no tenderness to palpation over the maxillary or frontal sinuses. Nares were patent bilaterally. Oropharynx was clear but he was edentulous. He did have a thick tongue. Mallampati Class 4 with a carotid posterior pharyngeal region. (Pages 12-13)

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/psychiatric evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant has reports of pain in his left knee and the clinical impression that claimant is deteriorating; however, the only finding made is that claimant has some tenderness in his musculature and also that he does a prosthetic left eye. 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 DHS-49 has restricted claimant from tasks associated with occupational functioning based upon claimant's report 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.

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. There is no evidence in the record indicating 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 that 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 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 his relevant work. Claimant did work light maintenance for approximately eight years. Therefore, this Administrative Law Judge finds there is no medical evidence in the file upon which this Administrative Law Judge could base a finding that claimant is unable to perform work in which 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 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 did testify that he does have a driver's license and he drives one time per day and he goes to the gas station which is two blocks away. Claimant does cook one to two times per week and cooks things like potatoes and things in the

crockpot like chicken. Claimant does not grocery shop but he does vacuum, do dishes and do laundry. Claimant testified that his hobby is fishing but he hasn't gone in three years. Claimant is able to walk a third of a block, stand for 20 minutes and sit for an hour at a time. Claimant is able to shower and dress himself and can carry 30 pounds and 15 pounds repetitively. Claimant is right handed and he had arthritis in his fingers. Claimant's level of pain on a scale from 1 to 10 without medication is 6 and with medication is a 4. Claimant testified that he does watch TV eight hours a day and he walks down to the community room and visits.

Claimant testified on the record that he does have 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 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 evidence on the record does not establish that claimant has no residual functional capacity.

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: May 19, 2009

Date Mailed: May 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.

LYL/vmc

cc:

