

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: 2008-30036
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 4, 2009
Kalamazoo 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, an in-person hearing was held on February 4, 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 May 28, 2008, claimant filed an application for Medical Assistance, retroactive Medical Assistance to February 3, 2008 and State Disability Assistance benefits alleging disability.

(2) On July 23, 2008, the Medical Review Team denied claimant's application stating that claimant impairments lacked duration.

(3) On August 8, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On August 8, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On October 7, 2008, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the claimant had an orchiectomy in [REDACTED] for testicular cancer. In [REDACTED] he had lymph node dissection. The claimant has not had chemotherapy. There is no evidence of recurrence or metastases. The claimant reports ongoing pain that is only somewhat controlled with medications. His exam was within normal limits except for abdominal pain. The claimant's treating physician has given less than sedentary work restrictions based on the claimant's physical impairments. However, this Medical Source Opinion is inconsistent with the great weight of the objective medical evidence and per 20 CFR 416.927(c)(2)(3)(4), and 20 CFR 416.927(d)(3)(4)(5), will not be given controlling weight. The collective objective medical evidence shows that the claimant is capable of performing light work. 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 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 a younger individual, GED and history of unskilled and semi-skilled work, MA-P is denied using Vocational Rule 202.20 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.

(6) Claimant is a [REDACTED]-year-old man whose birth date is [REDACTED]. Claimant is 6' 1" tall and weighs 150 pounds. Claimant attended the 9th grade and does have a GED. Claimant is able to read and write and does have basic math skills.

(7) Claimant last worked as a parking lot striper in [REDACTED] before he had cancer surgery. Claimant has also worked meat cutting at [REDACTED], stocking shelves and in retail at [REDACTED] as a sales and stock person. Claimant has also worked in a pet store.

(8) Claimant alleges as disabling impairments: testicular cancer, abdominal pain, hypertension and weight loss.

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

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

The objective medical evidence on the record indicates that the claimant underwent a left radical orchiectomy in ██████████ for testicular cancer (new information from DDS). On ██████████ the claimant underwent retroperitoneal lymph node dissection (Page 59) to rule out metastases. All lymph nodes were negative at that time (new information from DDS). A DHS-49 form dated ██████████ showed the claimant had testicular cancer in remission, abdominal pain and constipation (Page 32). The doctor indicated that claimant was slowly improving. He can occasionally lift less than 10 pounds and stand/walk less than two hours in an eight hour day (Page 33). In ██████████ the claimant reported having pain always present and is only somewhat controlled on every other day with Fentanyl patches. With his abdominal pain, he had an incision along the midline that extended from the lower border of his sternum to the pubic bone. There was an additional horizontal incision to the left lower quadrant. All were healing well. There was tenderness to palpitation along the line of incision surrounding the umbilicus and the left lower quadrant. The remainder of his exam was unremarkable (new information from DDS).

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 or could result in death. This Administrative Law Judge finds that claimant has established that he does have a severe impairment or combination of impairments which have lasted or will last the durational requirement of 12 months or more or could result in death.

At Step 3, claimant's impairments do not rise to the level necessary to be specifically listed as disabling as a matter of law.

At Step 4, claimant testified on the record that he does live with his uncle and his uncle supports him. Claimant does have a driver's license but cannot drive because he has no car and is also uncomfortable. The claimant testified that he does ride the bus five to six times a month and it usually takes between one and two hours. Claimant testified that he does cook everyday and cooks things like hamburger helper. Claimant testified that he does grocery shop one to two times per month and he needs help with large heavy items. Claimant testified that he does clean his home when he is feeling okay and usually does sweeping, picking up and laundry.

Claimant testified that on a good day he can walk a mile but that on a really bad day he can walk two blocks. Claimant testified that he has two to three bad days in a week. Claimant testified that he can stand for two hours and sit for 10 to 15 minutes at a time and that it is uncomfortable to sit. Claimant testified that he is able to shower and dress himself and tie his shoes and he can squat but it's painful and he can bend at the waist but it is very painful. Claimant testified that he is able to touch his toes. Claimant testified that the heaviest weight he can carry is a gallon of milk and that he is right handed and there is nothing wrong with his hands and arms or legs and feet. Claimant testified that his level of pain on a scale from 1 to 10 without medication is a 7 to an 8 which is constant and with his medication is a 1 to a 2. Claimant testified that he stopped smoking two months ago and that in a typical day he does laundry, cooks or cleans up a little bit and on a bad day he rests a lot and he only sits up when he has to.

At Step 4, this Administrative Law Judge finds that claimant can probably not do his prior job striping parking lots or meat cutting at this time because these jobs require a great deal of standing. Therefore, claimant is not disqualified from receiving disability 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).

The DHS-49 contained in the file dated [REDACTED], indicates that claimant can occasionally lift less than 10 pounds and that he is slowly improving and that he can stand or walk less than two hours in an eight hour day. Claimant could do simple grasping, reaching and fine manipulating with both upper extremities but not pushing or pulling and he can operate foot and leg controls with both feet and legs. Claimant had recent abdominal surgery with significant pain and he had no mental limitations. His examination areas were all normal except for his diffuse abdominal pain (Page 32 and 33 of the medical reports).

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 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's testimony as to his limitations indicates that he should be able to perform light or sedentary work.

There is insufficient objective medical evidence contained in the file of any type of depression or a cognitive dysfunction. Claimant testified on the record that he does not have any mental limitations. 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. In addition, claimant did testify that he does receive substantial 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 at least sedentary work even with his impairments. Under the Medical-Vocational guidelines, a younger individual (age

■) with a high school education and an unskilled work history who is limited to sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.27.

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 2, 2009

Date Mailed: March 3, 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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