

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: 2008-31030

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

January 13, 2009

Berrien 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 13, 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) In April 2, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On July 3, 2008, the Medical Review Team denied claimant's application stating that claimant impairments were non-exertional and that he could perform unskilled work.

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

(4) On September 5, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On September 23, 2008, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: that claimant is capable of performing other work in the form of sedentary, light work, medium work and unskilled work per 20 CFR 416.967(a)(b)(c) and 20 CFR 416.968(a).

(6) The hearing was held on January 13, 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 January 16, 2009.

(8) On January 29, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of medium work and unskilled work pursuant to Medical-Vocational Rule 203.28.

(9) On December 19, 2008, claimant received an unfavorable decision from the Social Security Administration.

(10) Claimant is a 38-year-old man whose birth date is [REDACTED]. Claimant is 5' 7" tall and weighs 160 pounds. Claimant recently gained 20 pounds. Claimant attended the 8th grade and has no GED and is able to read and write and does have basic math skills.

(11) Claimant last worked in 1989 as a painter. Claimant also worked delivering furniture and as a fiberglass finisher.

(12) Claimant alleges as disabling impairments: cirrhosis of the liver, seizures, liver failure, mood disorder and anxiety as well as nerve and muscle damage and hot flashes, dizziness and hypertension.

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).

The record shows that claimant has testified on the record that he has not worked since 1989 and is not engaged in substantial gainful activity. Therefore, claimant is not disqualified from receiving disability at Step 1.

At Step 2, the objective medical evidence on the record indicates that there are voluminous notes from [REDACTED]. case file. At page 29, claimant was alert, awake, oriented x3 and in no acute distress. His mood was irritable, his affect was anxious. His judgment, memory and insight were intact. At page 30, claimant was alert, awake, oriented x3 and in no acute distress. His mood was depressed. His affect was flat. Judgment, memory and insight were intact. On page 31 on [REDACTED], claimant was alert, awake, oriented x3 and in no acute distress. His mood was upbeat. His affect was anxious. His judgment, memory and insight were intact. His blood pressure was significantly improved on 20 mg of Lisinopril and he did not have any side effects at that time. Notes at page 24 indicate that as of [REDACTED], claimant weighed 153 pounds and his temperature was 97.6 degrees Fahrenheit. His pulse was 100. His respiratory was 20. His blood pressure was 170/88 and he had complaints of anxiety and stated that he had started drinking again and has been consuming two to three 40-ounces per day. At page 25 as of [REDACTED], claimant weighed 148 pounds, his temperature was 97.8 degrees Fahrenheit, pulse was 96, respiration was 18 and his blood pressure was 180/100. Claimant testified that he was in a motor vehicle accident. Pursuant to the Social Security Administration's report, the record establishes symptoms related to his liver disease began improving after his [REDACTED] hospitalization as the claimant was no longer drinking. However, his liver condition stabilized for awhile but he was no longer stable after he began drinking again. He began gradually regaining his weight following his hospitalization. Although the claimant reported drinking again in [REDACTED], in [REDACTED] he stated he was no longer drinking. Claimant testified on the record that he stopped drinking in [REDACTED] and he has not been hospitalized in the last year. Claimant testified that in a typical day he watches TV for four to five hours and sleeps.

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 a 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 has reports of pain in several areas of his body. However, there are no corresponding clinical findings that support the reports of symptoms and limitations made by claimant. Claimant's liver failure/liver problems have resolved and continue to be resolved as long as he does not drink alcohol. There is no clinical impression that claimant is deteriorating. There is no finding that claimant has any muscle or joint atrophy, trauma, abnormality or injury that is consistent with a deteriorating condition. In short, this Administrative Law Judge finds the medical record is insufficient to establish that claimant has a severely restrictive physical impairment. Claimant's hypertension is controlled by medication as long as he does not drink alcohol.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers mental limitations resulting from his reportedly depressed, anxious state. The evidentiary record indicates that claimant is oriented to person, time and place and that his judgment, memory and insight are intact during his psychiatric appointments. Claimant is always alert, awake and oriented x3 and in no acute distress during his medical appointments. There is no mental residual functional capacity assessment in the record. The evidentiary record is insufficient to find claimant suffers a severely restrictive mental impairment.

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).

Claimant testified on the record that he is anxious in public places and has hot flashes and gets dizzy and that he sometimes has these attacks two to three times per day and that it lasts up to two hours. Claimant was oriented to time, person and place during the hearing and he was able to answer all the questions at the hearing 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. Claimant has not established that he suffers a severe physical or mental impairment which have lasted the durational requirement of 12 months or more.

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.

At Step 4, 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. This Administrative Law Judge finds that that claimant does not have any physical restrictions. Claimant only has marked restrictions when drinking and not taking his medication. The record indicates that claimant has symptoms from chronic liver failure which would limit him to light physical exertion. The recording also establishes that the claimant does have depression/bipolar disorder/anxiety disorder which is controlled by medication which would limit him to unskilled work. The record does not establish that claimant has physical limitations as the result of chronic liver failure which would meet or equal any listed impairment.

The Administrative Law Judge, will 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 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 even with his impairments. Claimant testified on the record that he can walk two blocks, stand for an hour and sit for two hours at a time. Claimant testified that he is able to squat but it is hard to get up and that he is able to bend at the waist, shower and dress himself and tie his shoes. Claimant testified that the heaviest weight he can carry is five pounds and that he is right handed and that his hands cramp. Claimant testified that his level of pain on a scale from 1 to 10 without medication is a 6 and with medication is a 4. Claimant does receive relief from his pain medication.

Claimant testified that he does smoke a pack of cigarettes per day and his doctor has told him to quit.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial gainful activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

This Administrative Law Judge finds that claimant is not in compliance with his treatment program and is therefore disqualified from receiving disability for that reason also.

Claimant testimony and the information contained in the file indicate that claimant has a history of alcohol and tobacco abuse. An individual should not be considered to be disabled for purposes of Public Law 104-121, Section 105(b)(1), 110 STAT. 853 (42 USC 423(d)(2)(C), 1382(c)(a)(3)(J)(Supplement Five, 1999) if alcoholism or drug addiction would be a contributing factor material to the determination that an individual is disabled. In the instance case, even if the claimant were to be determined to be disabled, his alcoholism is material to 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. 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 which would have contributed to his physical and any alleged mental problems. Claimant is disqualified from receiving disability at Step 5 based upon the fact that he has not established by objective medical evidence that he doesn't have the residual functional capacity to perform light or sedentary work even with his impairments. Under the Medical-Vocational guidelines, a younger individual (age 38), with a less than 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 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: February 23, 2009

Date Mailed: February 24, 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.

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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:

