

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: 2009-10040
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 22, 2009
Kent 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 April 22, 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 July 31, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On August 28, 2008, the Medical Review Team denied claimant's application stating that claimant's impairments are non-exertional and that claimant could perform other work.

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

(4) On December 2, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On January 27, 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 per 20 CFR 416.967(c) pursuant to Medical-Vocational Rule 203.27.

(6) The hearing was held on April 22, 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 23, 2009.

(8) On May 5, 2009, the State Hearing Review Team again denied claimant's application stating that claimant could perform medium work per 20 CFR 416.967(c) and unskilled work per 20 CFR 416.968(a) pursuant to Medical-Vocational Rule 203.25 and commented that claimant should avoid unprotected heights and dangerous moving machinery.

(9) Claimant is a 40-year-old man whose birth date is [REDACTED]. Claimant is 5' 10" tall and weighs 159 pounds. Claimant recently lost 70 pounds. Claimant graduated from high school and was in the process of attending classes at [REDACTED] taking three classes two nights a week and he was going to class Monday's from 6:00 to 9:30 p.m. and Wednesday's from 6:00 to 10:30 p.m.

(10) Claimant last worked four years before the hearing as a drywall contractor for 20 years. Claimant has also worked maintenance at the [REDACTED] for two years.

(11) Claimant alleges as disabling impairments: seizure disorder, depression, anxiety, alcohol abuse and panic attacks.

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 for approximately four years. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that on [REDACTED] claimant had a MRI examination of the brain which indicated within the brain substance there

was no sign of focal areas of restricted diffusion. The ventricles, subarachnoid pathways and basilar cisterns were normal. There was no sign of demyelination, hemorrhage or extracerebral fluid collections. There was no sign of abnormal signal within the hippocampus or hippocampal radiations. The temporal lobes were of normal volumes bilaterally. There was satisfactory vascular flow voids at the skull base. The impression was a normal MRI examination of the brain. (Page 24 of the Medical Reports) A diagnostic radiology of the chest on [REDACTED] indicates normal two views of the chest. The heart, mediastinum, pulmonary parenchyma and pleural spaces were normal. (Page 27) An emergency and pre-hospital documentation indicates that on physical examination on [REDACTED] claimant's vital signs were charted. He was a pleasant, cooperative 39-year-old gentleman. He was normocephalic, conjunctivae were clear. Mucous membranes were moist. Face was somewhat ruddy in appearance. Neck was supple. No nuchal rigidity. Chest was clear throughout. No rales, wheezes or rhonchi. There was no chest wall tenderness. Heart rate and rhythm tachycardic, but regular. No murmur. Abdomen was soft and non-tender throughout. No guarding, no pulsatile mass. Extremities: there was no calf tenderness or cords. No cyanosis. Neurologically claimant was alert and lucid. Claimant was without focal or lateralizing deficits on the gross examination. The chest x-ray per radiology interpretation was unremarkable. A 12-lead EKG was obtained. It showed a sinus rhythm with a rate of 110 beats per minute. No evidence of acute ischemia or infarct. Intervals were appropriate. Comprehensive metabolic panel showed unremarkable BUN and creatinine. Glucose, potassium, liver enzymes were unremarkable with an AST of 29, ALT of 37, alk-phos was 84. White blood cell count was 6.7 with hemoglobin of 16.5, hematocrit was 47.6. Troponin and myoglobin were negative. Serum ETOH is less than 5. Dilantin level was 2.6. Claimant had no shortness of breath, no vomiting and no abdominal pain. Claimant had a diagnosis of ETOH

abuse with withdrawal symptoms and alcohol gastritis. (Pages 26-27) On [REDACTED] claimant had an electroencephalogram which indicated a normal EEG. He was awake and transiently drowsy. No focal, lateralizing or epileptogenic activity occurred. The EEG remained stable during three minutes of good hyperventilation with only transient non-sustained increases in the background with rhythmic activity, amplitude and slowing. (Page 57) Claimant was alert and oriented to time, place and person without evidence of recent or remote memory deficits. There was an underlying air of tenseness and anxiousness. Visual fields were intact to confrontation testing. Fundoscopy revealed no evidence of retinopathy or optic nerve disease. Pupils were equal, round and reactive to light and accommodation. Extraocular muscle function was intact in all cardinal positions of gaze. No nystagmus was present. Corneal reflexes were brisk and symmetrical. Jaw jerk was not exaggerated. Motor and sensory fifth and seventh were intact. Weber was midline. Rinne was physiologic. The uvula was central. Palate elevates symmetrically. Normal gag and swallow reflex. Phonation was normal. Sternocleidomastoid and trapezius muscle functions were normal. Tongue was midline without evidence of wasting or atrophy. No dyspraxia was present. The claimant's motor examination, there was normal bulk, power and tone in all muscles formally tested. In sensory evaluation, he was intact to all modalities of light touch, pinprick, vibration, and position sensation. In his cerebellar examination, finger to nose, hand to shin, and rapid alternating movements were performed normally and both tandem and standard Romberg's tests were negative. Deep tendon reflexes were physiologically brisk at 2-2.5+/4 and symmetric in the arms and at the knees. No pathological reflexes were elicited. (Page 55) In his general physical examination, claimant was 69" in height with a weight of 160 pounds. Blood pressure was modestly elevated at 138-140/68-70 in both arms in a sitting position.

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 no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant has reports of a seizure disorder and he stated that he has had about 30 seizures in 2009 so far.

There is no laboratory finding listed in the file which indicates that claimant has such a severe seizure disorder. There is no medical evidence finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. Claimant had normal neurological examinations. In short, 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 or mental impairment. 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, 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 his past relevant work.

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 no 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 testified that he does grocery shop two times per week and needs help with a ride. Claimant stated he does not drive because he takes Dilantin and he is not usually left alone. Claimant testified that he does dishes, vacuums and does laundry with his girlfriend. Claimant testified that he can walk two blocks, can stand with no limits and can sit for hours. Claimant can squat and bend at the waist as well as shower and dress himself, tie his shoes and touch his toes. The claimant can carry 50 pounds and he is right handed and his hands and arms are fine and his legs and feet are fine. Claimant is able to engage in sexual relations. Claimant does continue to smoke a pack of cigarettes per day even though his doctor has told him to quit. Claimant does continue to drink five to six beers two times a week even though his doctor has told him to stop. Claimant testified he stopped smoking marijuana twenty years before the hearing. Claimant testified that in a typical day he wakes up because he doesn't sleep much and gets up and goes to the store and visits his girlfriend where she works.

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

Claimant testified on the record that he does have depression and anxiety as well as a seizure disorder.

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 own statements it is documented that he had heavy use of alcohol. Claimant also continues to smoke despite the fact that 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). Claimant is not in compliance with his treatment program. Claimant was able to answer all the questions at the hearing and was responsive to the questions.

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 light or sedentary work even with his impairments. Under the Medical-Vocational guidelines, a younger individual (age 40), with a

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 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: June 4, 2009

Date Mailed: June 4, 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:

