

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: 2009-11114
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 7, 2009
Calhoun 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 May 7, 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 July 23, 2008, claimant filed an application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits.

(2) On October 6, 2008, claimant filed a second Medical Assistance application requesting disability. The applications are herein consolidated.

(3) On October 15, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(4) On October 6, 2008, the department caseworker sent claimant notice that his application was denied.

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

(6) Claimant filed a second request for a hearing on January 14, 2009.

(7) On February 6, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of light work per 20 CFR 416.967(b) pursuant to Medical-Vocational Rule 202.20.

(8) The hearing was held on May 7, 2009. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(9) Additional medical information was submitted and sent to the State Hearing Review Team on May 11, 2009.

(10) On May 12, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of light work per 20 CFR 416.967(b) pursuant to Medical-Vocational Rule 202.20 and stated in its comments that the newly submitted evidence does not significantly or materially alter the previous recommended decision.

(11) Claimant is a 41-year-old man whose birth date is [REDACTED]. Claimant is 6' 1" tall and weighs 340 pounds. Claimant recently lost 30 pounds. Claimant attended one year of college and is able to read and write and does have basic math skills.

(12) Claimant last worked July 2008 in production where he had to do 30-50 pounds of lifting. Claimant worked the job for four years and left because he stated that he could not stand or walk. Claimant has also worked as a carpenter, in production assembly, as a cook in a restaurant and construction worker.

(13) Claimant receives Food Assistance Program benefits and the Adult Medical Program.

(14) Claimant alleges as disabling impairments: degenerative disc disease in his back at L4-5, stenosis, pain, right hip pain (from replaced hip in [REDACTED]), hypertension as well as 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 July 2008. Claimant is not disqualified from receiving disability at Step 1.

The objective medical information in the record indicates that claimant last worked July 2008. Claimant would not meet duration before July 2009, because he was substantially gainfully employed in July 2008. Therefore, claimant is denied disability at Step 2 based upon the fact that his impairments lack duration.

The objective medical evidence on the record indicates that claimant does have a prescription for a walker. (Page 137) [REDACTED] indicates that claimant can sit, stand or walk one half an hour without interruption and can sit or stand as needed a half an hour during an eight hour workday with normal break periods and that he can occasionally lift five pounds but never lift ten pounds or over. The deficits have been in effect since [REDACTED]. (Page 138) A clinic record of [REDACTED], indicates that claimant was a 40-year-old male in no acute distress. His vital signs were blood pressure 150/100, weight was 261, pulse was 80 and respiratory rate was 16. HEENT was unremarkable. The claimant had some piercings. Chest was clear. Cardiac exam was normal. The abdomen was obese. There was discomfort to the palpation in the right inguinal canal and there was a scar there too. He experiences quite a bit of pain when we press that. His gait was antalgic. There were no hernias or lumps. Neurologic examination was normal. The left foot examination showed edema and swelling over the great toe and slightly

towards the dorsal foot. No skin changes were noted. His assessment was right inguinal pain, hypertension and podagra. (Page 119) A CT of the pelvis with contrast for inguinal pain three months post hernia operation on [REDACTED] indicated that bowel structures included were normal. The hernia repair on the right appeared intact. The bladder, prostate and seminal vesicles appeared normal. Boney structures were remarkable for avulsion of anterior inferior iliac spine on the right. There was prominent degenerative change in the right hip that was asymmetric. Obesity is also noted. There was multilevel degenerative disc and facet disease in lower lumbar spine. The impression was that there was no evidence for operative complications or recurrent hernia. Mostly likely etiology for the claimant's inguinal pain is the avulsion of the anterior inferior iliac spine. Other possibilities include pain from the right hip, degenerative joint disease, and nerve root compression related to the lumbar disc disease. (Page 98)

A [REDACTED] medical report dated [REDACTED], indicated that claimant's physical examination revealed a 40-year-old man appearing his stated age. He weighed 373 pounds and was 6' 1" tall with a resulting BMI of 49.1. He was alert and oriented and appropriate to questioning. Neck showed no adenopathy, no carotid bruit and the thyroid was not palpable. Heart was regular in rate and rhythm without S3, S4 or murmurs. Lungs were clear to auscultation without rhonchi, wheezes or rales. Abdomen was soft and non-tender without any masses. The impression was morbid obesity with comorbid diseases of chronic low back pain, arthritis and sleep apnea. (Pages 94 and 95) Progress note record of [REDACTED], indicated that claimant was five weeks post-op at the right total hip, doing much better, up and about without much difficulties with the hip and most concern being his chronic low back syndrome and the pain aggravated recently. He had no sciatic or radicular type pain, rather fairly focal low back pain which he has dealt with long term. He indicated that the hip felt fine, wound was well-

healed and looked to be mobilizing it well. He was independently ambulatory, although at times he needed assistance because of his low pain. (Page 91)

A [REDACTED] neurosurgery report indicated on examination claimant was morbidly obese and grip strength throughout 5/5 on exam. He had slight decreased strength in the right lower extremity; 4+ strength in the iliopsoas and 4+/5 and 4+/5 plantar and dorsiflexion. Sensory appeared to be intact throughout. He had normal reflexes. No bowel or bladder complaints. No cerebellar or cranial nerve deficits. The CT scan of his pelvis as well as a MRI of his lumbar spine indicated that his lumbar spine showed degenerative disc disease at multiple levels particularly at L4-L5 and L5-S1 levels with the L5-S1 worst of them all. He had moderate central canal stenosis as well moderate facet arthropathy. The doctor recommended that claimant follow-up in the [REDACTED] for back strengthening exercises, possible facet injections and a pre-operative evaluation with discogram but did not recommend any surgical intervention unless claimant was able to lose at least 100 to 150 pounds. (Pages 53 and 54)

Claimant was seen at [REDACTED] on [REDACTED]. His blood pressure was 142/98, pulse was 89, respirations were 16 and temperature was 98. Pain level was stated to be an 8/10. Pulse oximetry was 97% on room air. The claimant was alert, oriented x3 and in no acute distress. He was well-hydrated and well-nourished with appropriate mood and affect. His neck was supple with no masses or tenderness. His thyroid was normal. Respiratory: normal respiratory effort. Auscultation of the lungs revealed normal breath sounds. In his cardiovascular: the heart auscultation also revealed RRR and no abnormal sounds or murmurs. Extremities revealed no non-traumatic edema. Musculoskeletal: he was able to self ambulate and weight bear equally. Claimant had no cervical, thoracic or spinal tenderness. He did have tenderness at L4/L5. There was no ecchymosis, edema or erythema. He had a positive straight leg raise as

well. He had good sensation in the lower extremities. Claimant was given some Valium due to his muscular spasms and was feeling significantly better and discharged in stable condition.

(Pages 5 and 6)

Claimant went to the emergency room [REDACTED] complaining of low back pain when he fell down two steps. Medical report indicates that claimant's vital signs were temperature 98.4, pulse 117, respirations 20, and blood pressure 158/100. Generally, claimant was awake, alert, appropriate, well-nourished and normal mood. He was in moderate discomfort from the low back pain. Claimant's neck was supple with no masses or tenderness. Thyroid was normal. Cardiovascular, claimant's heart auscultation revealed RRR and no abnormal sounds or murmurs. Extremities revealed no non-traumatic edema. Respiratory showed normal respiratory effort. Auscultation of lungs revealed normal breath sounds. Abdomen was obese and soft and bowel sounds were present. There was no guarding, rebound or rigidity. No hepatosplenomegaly. In the musculoskeletal area claimant had pain in the low back. He had good movement of all four extremities; however, he had pain with movement of the lower extremities. His x-ray interpretation, he had x-rays of LS spine done interpreted as normal by the doctor. Claimant was given prescriptions for Vicodin and Skelaxin and discharged. (Pages 3 and 4) An x-ray of the spine, LS four view indicated that claimant had five formed and mobile lumbar vertebral bodies. The lateral showed no subluxation. SI joints were normal. There was no acute process. (Page 2)

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 evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant has reports of pain in his back. It has been established that claimant does have degenerative disc disease.

However, there is no clinical impression that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, 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.

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 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 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 and was oriented to time, person and place during all of his medical appointments. 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 work. Claimant could probably perform his past work as a cook in a restaurant even with his impairments. It should be noted for the record that all of claimant's progress reports indicate that claimant can ambulate without assistive devices. He does have a prescription dated [REDACTED] for a walker; however, none of the records indicate that he has needed the walker. Claimant was able to drive approximately a half an hour to the hearing and stated that he can stand for 15-20 minutes at a time and sit for 15-20 minutes at a time. However, his residual functional capacity assessment indicates that claimant can stand, sit and walk at least a half an hour at a time. Therefore, claimant's testimony and the medical reports are somewhat inconsistent. This Administrative Law Judge finds that there is insufficient objective medical evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work which he has engaged in, in the past. Therefore, claimant is 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).

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 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.

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. 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 a younger individual (age 41), with a more 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 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. Claimant may benefit from a referral to Michigan Rehabilitation Services.

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 11, 2009

Date Mailed: June 12, 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:

[REDACTED]