

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: 2009-11731
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 29, 2009
Macomb 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 29, 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 24, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On December 11, 2008, the Medical Review Team denied claimant's application stating that claimant's impairments lacked duration.

(3) On December 15, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On December 19, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On February 17, 2009, the State Hearing Review Team again denied claimant's application stating that claimant's impairments lacked duration per 20 CFR 416.909 and commented that claimant sustained a left calcaneus fracture in [REDACTED]. X-rays showed the fracture was healed in [REDACTED]. The claimant's fracture did not prevent all types of work for 90 days or more.

(6) The hearing was held on April 29, 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 June 1, 2009.

(8) On June 5, 2009, the State Hearing Review Team again denied claimant's application stating that claimant's impairments lacked duration per 20 CFR 416.909 and commented that the medical evidence of record indicates that claimant's condition is improving or is expected to improve within 12 months from the date of onset or from the date of surgery. Therefore, MA-P is denied due to lack of duration under 20 CFR 416.909. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 as the impairment(s) would not preclude all work for 90 days.

(9) Claimant is a 43-year-old man whose birth date is [REDACTED]. Claimant is 5' 10" tall and weighs 156 pounds. Claimant recently lost 22 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills.

(10) Claimant last worked April 20, 2008 for [REDACTED] as an auto body technician where he worked for 28 years total before being laid off.

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

(12) Claimant alleges as disabling impairments: a fracture of his foot, deep vein thrombophlebitis, shortness of breath, blood clots in the right leg, problems with his lungs, depression, anxiety, and a chemical imbalance.

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 last worked April 20, 2008. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a [REDACTED] Medical Examination Report indicates that claimant had normal examination areas except for the range of motion in the left ankle where he had mild swelling and the clinical impression was that he was improving and that he could never carry 20 pounds or over, but could occasionally carry 10 pounds or less. Claimant could stand or walk about six hours in an eight-hour workday and could use both upper extremities for simple grasping, reaching, pushing/pulling, and fine manipulating but could not operate foot or leg controls. Claimant had no medical limitations. (Pages 21-22)

A left lower extremity venous ultrasound was performed [REDACTED] which showed that the left lower extremity was evaluated. Acute thrombus was noted to the greater saphenous vein below the knee and lesser saphenous vein below the knee. The deep system is patent and intact without evidence of acute or chronic thrombus involving the common femoral, superficial femoral, popliteal or posterior tibial veins. The impression was acute superficial thrombophlebitis, left lower extremity, below the knee with no evidence of acute deep vein thrombosis, left lower extremity. (Page 127)

A radiology report of the chest dated [REDACTED] indicates that frontal and lateral views of the chest were obtained. The lungs were clear. Pleural surfaces were unremarkable. Heart size was within normal limits. Left hilar markings were slightly prominent although it was

likely a projectional finding. Osseous structures appeared unremarkable. The conclusion was that there was no acute process identified and there was minimal prominence of the left hilar markings, likely projectional. A follow-up study would be beneficial to assess for change.

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A vascular examination dated [REDACTED] indicated that claimant had a chronic right femoral deep thrombus and acute right posterior tibial deep vein thrombus and chronic greater and less saphenous vein superficial femoral thrombophlebitis on the left. (Page 90)

Discharge instructions dated [REDACTED] indicate that claimant had been diagnosed with superficial thrombophlebitis which was an inflammation of the superficial veins, usually in the legs. Symptoms were usually pain, redness, and tenderness along the vein and it can usually be treated with warm compresses and anti-inflammatory medications like ibuprofen and sometimes support stockings. Most cases of superficial thrombophlebitis improve without any long-term problems and rarely blood clots can form. (Page 61) A [REDACTED] consultation indicates that on physical exam claimant had a temperature of 97.4, his heart was 82, blood pressure was 106/71, and respirations were 18. Pain was approximately 6 out of 10. The claimant was saturating at 99% on room air. The claimant was well nourished and well hydrated. Pupils were reactive, extraocular movements were intact. No conjunctival redness or drainage. In the ENT there were no external masses or lesions. No nasal drainage. Pharynx was clear; airway was patent. The neck was supple with no meningeal signs. Trachea was midline. No masses or thyromegaly. The heart rate and rhythm was regular and it was good peripheral pulses. No peripheral edema. In the lungs and chest the breath sounds were clear and equal bilaterally. No rales, rhonchi, or wheezes and no retractions. The abdomen was soft without tenderness. No palpable masses or organomegaly. No peritoneal signs. In the extremities the left

lower extremity had superficial thrombophlebitis. There was a boggy feeling at the calf and there was some pain. There was no edema. There were bilateral 2/4 femoral, popliteal, and dorsalis pedis pulses. There was no edema. Neurologic sensation was grossly intact. Cranial nerve exam revealed face was symmetrical, tongue was midline, and speech was clear. The skin had no rash or petechiae. The skin turgor palpated. Psychiatric – the claimant was alert and oriented and had appropriate behavior and judgment. He had hemoglobin of 19, hematocrit of 56, and white blood cell count of 4.7. (Page 47)

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. This Administrative Law Judge finds that claimant's impairments do not meet duration pursuant to CFR 416.909. 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 multiple areas of his body; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. Claimant testified on the record that he does have a driver's license but his mother and brother take him places. Claimant testified that he does cook lunch and dinner and cooks things like spaghetti, french toast, and pork chops. Claimant testified that he does grocery shop two times per month and uses the electric cart and that he does do housework by cleaning the table, vacuuming, and doing laundry but his sister does most of the other work. Claimant testified that he could walk 15-20 steps with a prescribed cane and that he can stand for 5-10 at a time and he can sit all day long. Claimant testified that he reclines with his leg up most of the day. Claimant testified that he can shower and dress himself, tie his shoes while sitting, but not touch his toes or squat. Claimant testified that he can bend at the waist. Claimant testified that the heaviest weight he can

carry if 5-7 pounds and that his right-handed and has carpal tunnel syndrome in his hands.

Claimant testified that his level of pain on a scale from 1 to 10 without medication is an 8-1/2/9 and with medication is a 5 or a 6. Claimant testified that he doesn't smoke, but he does drink occasionally, and he doesn't take any drugs besides medication but he drinks non-alcoholic beer.

Claimant testified that in a typical day he does the dishes and makes lunch and dinner and goes to the grocery store with his mom. Claimant watches 3-4 hours of television per day and reads a lot.

This Administrative Law Judge finds that the DHS-49 indicates the examination areas are normal with the exception of the left ankle. There are no laboratory findings listed in the DHS-49. The clinical impression is that claimant is improving. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, the DHS-49 has restricted claimant from tasks associated with occupational functioning based upon claimant's 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 or his chemical imbalance. 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 as an auto body technician. However, this Administrative Law Judge will not deny him at Step 4 based upon the fact that he probably has to do standing and he cannot currently stand for long periods of time because of his ankle. 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).

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 does retain bilateral manual hand dexterity. Claimant's activities of daily living do not appear to be very limited and he should be able to perform sedentary work even with his impairments. The claimant's testimony as to his limitations indicates that he should be able to perform sedentary work.

Claimant testified on the record that he does have depression, anxiety, and a chemical imbalance.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

There is insufficient objective medical/psychiatric evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. Claimant was able to answer all the questions at the hearing and was responsive to the questions. Claimant was oriented to time, person and place during the hearing.

Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to claimant's ability to perform work. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity. 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 sedentary work even with his impairments. Under the Medical-Vocational guidelines, a younger individual (age 43), with a high school education and an unskilled work history who is limited to sedentary 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 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: August 6, 2009

Date Mailed: August 6, 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:

