

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: 2009-11760
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 10, 2009
Bay 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 June 10, 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 October 4, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On November 24, 2008, the Medical Review Team denied claimant's application stating that claimant's impairments are non-exertional.

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

(4) On December 26, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On February 11, 2009, the State Hearing Review Team again denied claimant's application stating that claimant could perform sedentary work per 20 CFR 416.967(a) and unskilled work per 20 CFR 416.968(a), pursuant to Medical-Vocational Rule 201.24.

(6) Claimant is a 38-year-old man whose birth date is [REDACTED]. Claimant is 5' 3" tall and weighs 180 pounds. Claimant attended the 10th grade and has no GED. Claimant is able to read and write and does have basic math skills.

(7) Claimant last worked in 2003 as a laborer at [REDACTED] e. Claimant has also worked as a painter and was incarcerated in [REDACTED]. Claimant had been living off of a life insurance policy from his deceased fiancé, but the money has run out.

(8) Claimant alleges as disabling impairments: degenerative bone disease, pain, arthritis, back problems, and six surgeries in his shoulders and lower back in the past nine years, a caged fusion in his neck, four discs removed from his back, and a neuro stimulator installed in his stomach as well as a titanium rod in his neck.

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 2003. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a physical examination dated [REDACTED] indicates that claimant was cooperative in answering questions and following commands. The claimant's immediate, recent, and remote memory was intact with normal concentration. The claimant's insight and judgment were both appropriate. Claimant provided a good effort during the examination. He was appropriately dressed and groomed. He is of short stature. His blood pressure was 120/80. His pulse was 70 and regular. His weight was 170 pounds. His height was 64" without shoes. His skin was normal other than surgical scars on the back, neck, and shoulders. Claimant had visual acuity in the right eye which equaled 20/20, left eye equaled 20/30 with corrective lenses. Pupils were equal, round, and reactive to light. The claimant could hear conversational speech without limitation or aids. The neck was supple without masses. Breathe sounds were clear to auscultation and symmetrical. There was no

accessory muscle use. The heart had regular rate and rhythm without enlargement. There was a normal S1 and S2. There was no organomegaly in the abdomen or masses. Bowel sounds were normal. In the vascular there was no clubbing, cyanosis, or edema detected. The peripheral pulses were intact. In the musculoskeletal area there was no evidence of joint laxity, crepitance, or effusion. Apprehension and impingement signs were negative bilaterally. There was no atrophy of the shoulders. There was full fist and full grip strength bilaterally. Pincher strength and finger abduction was intact. Dexterity was unimpaired. The claimant could button clothing and open a door. The claimant had no difficulty getting on and off the examination table, mild difficulty heel and toe walking, and severe difficulty squatting being able to touch the floor but he fell backward. There was no kyphoscoliosis, but there was lack of lumbar lordosis. The back was atrophic. Spurling's was negative. Straight leg raising test was negative. Range of motion studies of the joints was normal except for his dorsolumbar spine showed flexion as normal at 0-90 degrees and claimant had 70 degrees of range. Extension, normal was 0-25 degrees and claimant had 10 degrees. His right lateral flexion, normal was 0-25 degrees and claimant had 25 degrees. Left lateral flexion, normal was 0-25 degrees and he had 25 degrees. In the cervical spine right rotation normal was 0-80 degrees and claimant had 70 degrees and his left rotation was normal at 0-80 degrees and he had 60 degree range. Claimant's cranial nerves were intact. His motor strength and tone were normal. His sensory was intact to light touch and pinprick. Reflexes were intact and symmetrical. Romberg testing was negative. The claimant walked with a somewhat antalgic gait without the use of an assistive device. The conclusion was bilateral shoulder pain because he was status post Mumford procedure bilaterally. Prior surgical scars were seen. There was no atrophy and there was normal range of motion. Apprehension and impingement signs were negative. In his neck pain he was status post cage fusion. Neck range of

motion was only slightly diminished. Spurling's was negative. Upper extremity strength was normal. Hand dexterity was unimpaired. He had chronic low back pain. He was status post cage fusion. His back is atrophied and somewhat flat with lack of lumbar lordosis. There were no radicular elements seen on exam. Straight leg raising test was negative. Power was normal. Deep tendon reflexes were intact. He had mild difficulty during orthopedic maneuvers and severe difficulty squatting and he actually caught himself as he was falling backward. He had odynophagia and dysphagia and he was deserving of an EGD followed up by probable antacids. (Pages 87-90)

A psychological examination dated [REDACTED] indicates that claimant was friendly and cooperative with the interviewing. Claimant demonstrated good insight, judgment, and motivation. His self esteem appeared fair. He did not appear to be exaggerating or minimizing any of his symptoms. Reality testing was within normal limits. Several pain behaviors were noted as claimant walked with a limp and his gait was wary. The claimant also moved and shifted frequently in his seat. The claimant's speech was logical, organized, and relevant. The claimant denied ever having hallucinations, obsessions, or compulsions. He denied having paranoid thoughts. He reported feeling worthless on a daily basis. The claimant reported having suicidal ideation in the past. He denied any present thoughts, plans, or intent, and has never attempted suicide. When asked about any self-injurious behaviors, the claimant reported that he has been getting tattoos all over his body since he was 14 and would consider this behavior a self injury. The claimant rated daily physical pain on a scale on one lowest to ten highest as an eight. The claimant occasionally has trouble falling and staying asleep and gets four to eight hours of sleep in a 24 hour period. He described his appetite as fair. His affect was mildly constricted. Claimant described his mood as basically even or stable. He reported feeling nervous and

worried almost daily but denied ever having a panic attack. The claimant reported that he believes he has experienced depressive episodes even prior to 2000. He admitted to having a long history of anger problems, both physical and verbal. He stated that he attended an anger management class at [REDACTED]. The claimant denied having crying spells. He loses his temper verbally on a daily basis and feels irritable almost daily. The claimant was oriented to time, place, person, and date. The claimant was able to repeat six digits forward and three digits backward. The claimant was able to recall three of three objects after approximately three minutes had passed. The claimant identified the president prior to the current U.S. president as Clinton. The claimant named the current U.S. president as Bush. The claimant named five large cities as Detroit, Chicago, Los Angeles, Quebec, and New York City. The claimant stated the number of weeks in a year was 52 and that Martin Luther King was black man who did a speech. Claimant did Serial 7s as 93, 86, 57, 50, 43, 38, 31, 24, 17, 10, and 3. The claimant had significant trouble with concentration. Claimant stated that $9 \times 7 = 62$, $8/3 = 6$, $33 - 16 = 17$, and $15 + 29 = 44$. The claimant interpreted the saying, "the grass is greener on the other side of the fence" as always can be something better someplace else and the claimant interpreted the saying, "don't cry over spilled milk" as things happen. Claimant stated that a bush and a tree are alike because they have leaves and they are different because one's taller. Claimant stated that an orange and apple are alike because they are fruit and they are different because of the texture. Claimant stated that if he found an envelope on the street that was sealed, addressed, and had a stamp on it he would put it in a mailbox. In summary, the claimant presented with mild depressive symptoms and pain disorder. He has been diagnosed with degenerative bone disease, arthritis, and experienced six surgeries. He had a neuro stimulator implanted in his stomach for pain management. In addition, he had a significant history of polysubstance abuse and primarily

used cocaine, marijuana, and alcohol. The claimant admitted at the medical appointment that he continued to use marijuana weekly, but denied consuming any other substances. His GAF was 52. (Pages 81-86)

A Medical Examination Report in the file indicates that claimant's condition is deteriorating and that he can occasionally lift less than 10 pounds but never lift 10 pounds or over. Claimant can sit less than six hours in an eight hour day and stand or walk less than two hours in an eight hour day. Claimant can use his upper extremities for simple grasping and fine manipulating, but not for reaching or pushing/pulling. (Pages 75-76)

The rest of the information contained in the file was from 2007 backward.

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 multiple areas of his body; however, there are insufficient objective corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. This Administrative Law Judge cannot give weight to the treating physician's DHS-49 as it is internally inconsistent. The 49 indicates that many of the examination areas are normal with the exception of musculoskeletal and neurological examination areas. The clinical impression is that claimant is deteriorating; however, there is no medical finding in the other objective medical evidence 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. In addition, the DHS-49 indicates that claimant could probably perform

sedentary work even with his impairments since it states that claimant can sit for six hours out of an eight hour day. 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 insufficient objective medical 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. 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. 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. Claimant's past relevant work was as a laborer on an assembly line. Claimant could do light assembly work even with his impairments. Therefore, if claimant had not already been denied at Step 2, he would again be denied 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 testified on the record that he does live with his mother and that his mother takes him where he needs to go. Claimant does cook two times per week and cooks things like meat and potatoes. Claimant does grocery shop one to two times per month and stated he needs help pushing the cart. Claimant does clean his home by cleaning the bathroom, vacuuming, doing laundry and dishes and he cuts the grass with a riding or push mower but it is not much grass. Claimant testified that he does play guitar and watch television two hours a day and that he can walk 40 steps before his hip gives out from the pain, stand for 20 minutes at a time, and sit for an hour at a time. Claimant testified that he cannot squat but can bend at the waist. Claimant testified the heaviest weight he can carry is five pounds and that he is right-handed and that he has some numbness and tingling in his hands. Claimant testified that his level of pain on a scale from 1 to 10 without medication is a 9 and with medication is a 5. Claimant does continue to smoke a pack of cigarettes per day and he does smoke marijuana he testified for pain.

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 submitted insufficient objective medical evidence that he lacks the residual functional capacity to perform some other less strenuous tasks that in his prior employment or that he is physically unable to do light or sedentary tasks if demanded of him. The claimant's testimony as to his limitations indicates that he should be able to perform light or sedentary work.

Claimant testified on the record that he does have depression.

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 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 the claimant's medical reports and his own testimony, claimant does continue to smoke marijuana and continues to smoke cigarettes which would not be in compliance with his treatment program.

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). Continued substance abuse would also contribute to his physical and any alleged mental problems.

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 38), with some high school education and an unskilled work history who is limited to light work is not considered disabled pursuant to Medical-Vocational Rule 201.24.

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.

The Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) is material to a person's disability and when benefits will or will not be approved. The regulations require the disability analysis be completed prior to a determination of whether a person's drug and alcohol use is material. It is only when a person meets the disability criterion, as set forth in the regulations, that the issue of materiality becomes relevant. In such cases, the regulations require a sixth step to determine the materiality of DAA to a person's disability.

When the record contains evidence of DAA, a determination must be made whether or not the person would continue to be disabled if the individual stopped using drugs or alcohol.

The trier of fact must determine what, if any, of the physical or mental limitations would remain if the person were to stop the use of the drugs or alcohol and whether any of these remaining limitations would be disabling. Claimant also does not meet the definition of disabled based upon the fact that his drug abuse would be material to his disability.

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 4, 2009

Date Mailed: August 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.

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