

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: 2009-13010
Issue No: 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 27, 2009
Ingham 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 May 27, 2009. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly determine that claimant was no longer to receive 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) Claimant was receiving State Disability Assistance benefits based upon Michigan Rehabilitation Service's involvement.

(2) On November 14, 2008, the Medical Review Team denied claimant continued receipt of State Disability Assistance stating that claimant was not disabled.

(3) On November 22, 2008 the department caseworker sent claimant notice that his State Disability Assistance would be cancelled based upon the determination that he was not disabled.

(4) On December 29, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On February 19, 2009, the State Hearing Review Team again denied claimant's application stating that it needed additional medical information.

(6) The hearing was held on May 27, 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 September 8, 2009.

(8) On September 15, 2009, the State Hearing Review Team again requested a psychiatric evaluation.

(9) A psychiatric evaluation was performed and sent to the State Hearing Review Team on November 9, 2009.

(10) On November 12, 2009, the State Hearing Review Team denied claimant's application stating that claimant could perform unskilled work per 20 CFR 416.968(a).

(11) This is not a medical review for continued State Disability Assistance benefits because claimant was before determined to be disabled. Claimant was only receiving State Disability Assistance benefits based upon his involvement with Michigan Rehabilitation Service.

Once he stopped going to Michigan Rehabilitation Services he was not eligible to receive State Disability Assistance benefits unless he was determined to be disabled and he was not determined to be disabled in this case.

(9) Claimant is a 49-year-old man whose birth date is [REDACTED]. Claimant is 5' 11" tall and weighs 289 pounds. Claimant has a GED and is able to read and write and does have basic math skills.

(10) Claimant last worked in 2006 as a cook at the [REDACTED]. Claimant also worked as a cook at the [REDACTED] and was incarcerated from [REDACTED]

(11) Claimant alleges as disabling impairments: Bipolar disorder, bone disease, back problems and seizures.

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 SDA program differs from the federal MA regulations in that the durational requirement is 90 days. This means that the person's impairments must meet the SSI disability standards for 90 days in order for that person to be eligible for SDA benefits.

At Step 1, claimant is not engaged in substantial gainful activity and has not worked since 2006. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant has a history of cocaine and marijuana use. He had a verbal IQ of 57, a performance IQ of 59 and a full scale IQ of 54 which is extremely low. During the evaluation on October 9, 2009, claimant was oriented to time, place and person. He could recall three digits forward and zero digits backwards. Interestingly during his prior evaluation at the end of [REDACTED] he was able to recall three digits backwards. It is possible he was experiencing significantly more internal agitation during this evaluation which could have made it more difficult for him to complete the task. He could also have been putting forth less effort. He could recall zero out of three objects after a three minute time lapse.

He knew his birth date, but could only name one recent past president. It was noted that during his evaluation in [REDACTED] he was able to name four past presidents. He correctly named two large cities, two currently famous people and no current events. During his prior evaluation he was able to name five large cities. He could not complete serial 7s. He stated the proverb "the grass is greener on the other side of the fence" meant stay on your own grass and he stated the proverb "don't cry over spilled milk" meant clean up your own mess. He indicated a bush and a tree were alike in that they were both green. He indicated that they were different in size. He stated if he found a stamped, addressed envelope in the street he would leave it there. He stated that if he were the first person in a theater to discover a fire, he would get out of there.

His current GAF was 50 and he was diagnosed with malingering. Major depressive disorder, cognitive disorder, panic disorder, cocaine dependant, cannabis dependence, alcohol dependence and paranoid personality disorder.

A [REDACTED] assessment indicates that claimant was alert and cooperative and no acute distress. His gait was mildly antalgic. No focal motor deficits were identified in the lower extremities bilaterally on manual muscle testing. Sensation was intact to light touch in the lower extremities bilaterally. Reflexes were 2+ patella, Achilles bilaterally. Blood pressure was 118/78, pulse was 64 and respiration was 12. He had low back pain and left knee effusion and medial meniscus tear.

On [REDACTED] he had the same diagnosis and was advised that he consider doing some volunteer work to establish a routine outside of his home. He was to continue to try home stretches from low back pain handout. A [REDACTED] [REDACTED] report indicates that claimant's vital signs were; blood pressure 126/90, pulse was 84, respiration was 14. He was alert, cooperative and in no acute distress. His gait was minimally antalgic. No focal motor deficits were identified in the lower extremities bilaterally on manual muscle testing. Sensation was intact to light touch in the lower extremities bilaterally. Straight leg raising was negative bilaterally. Reflexes were 2+ at the patella and Achilles bilaterally. He had some difficulty in performing pelvic tilt but he was able to identify his abdominal muscles when instructed.

A medical examination report dated [REDACTED] indicates that claimant was normal in all areas of examination except he had back and knee pain and that he was stable.

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 90 days for State Disability Assistance benefits. There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant does have medial meniscus tear. However, he is able to walk without assistance and

does not have a limitation on his activities of daily living. Claimant testified that he lives with a friend who supports him and he is single with no children under 18. Claimant testified that he does not have a driver's license but he usually takes the bus or his friend takes him. He takes the bus two times per month and rides the bus one hour. He does cook two to three times per week. He can cook things like hamburgers and hotdogs and he does clean up after himself by cleaning away his mess. Claimant picks weeds as outside work. Claimant testified that he can walk six to eight blocks with a cane and two to four blocks without a cane. Claimant can stand for ½ hour to 45 minutes at a time but can not squat because of his knees. Claimant testified that he can sit for two hours and bend center to waist and is able to shower and dress himself but not often tie his shoes or touch his toes. Claimant testified the heaviest weight he can carry is 15 to 20 pound that he is right handed and that his hands and arms sometimes ache. Claimant testified that his level of pain on a scale from one to ten without medications is a ten and with medications is an eight and that he smokes seven to eight cigarettes per day as doctors told him to quit but he not in a smoking cessation program. Claimant testified that he used to drink beer one to two times a week but he stopped. He stopped using crack in December, 2008. 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 claimant has restricted himself from tasks associated with occupational functioning based upon his reports of pain (symptoms) rather than medical findings. Claimant did testify that he does receive some relief from his pain medication. 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. Claimant did testify that he has a seizure disorder and bipolar disorder and has emotional mood swings. However, this Administrative Law Judge finds that they are definitely impacted by substance abuse. 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 past relevant work. This Administrative Law Judge finds that claimant could work as a cook even with his impairments. There is insufficient objective medical evidence in the record to indicate that claimant would not be able to work as a cook. 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'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 that he should be able to perform light or sedentary work.

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's testimony and the information indicate that claimant has a history of tobacco and alcohol abuse. Applicable hearing is the Drug Abuse and Alcohol (DA&A) Legislation, Public Law 104-121, Section 105(b)(1), 110 STAT. 853, 42 USC 423(d)(2)(C), 1382(c)(a)(3)(J) Supplement Five 1999. The law indicates that individuals are not eligible and/or are not disabled where drug addiction or alcoholism is a contributing factor material to the determination of disability. Claimant admitted to drinking beer and also that he used to smoke crack. After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that claimant does not meet the statutory disability definition under the authority of the DA&A Legislation because her substance abuse is material to his alleged

impairment and alleged disability. Claimant did testify on the record that he does continue to smoke despite the fact that his doctor has told him to quit. He is not in a smoking cessation program. Claimant is not 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).

Claimant testified on the record that he does have a seizure disorder as well as emotional mood swings and bipolar 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 medical reports, it is documented that he had use of alcohol as well as crack cocaine abuse which could have contributed to his physical and 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. 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. PEM, Item 261, p. 1.

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 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 claimant's State Disability Assistance benefits case was appropriate to be cancelled as he was no longer engaged in Michigan Rehabilitation Services.

Accordingly, the department's decision is AFFIRMED.

/s/ _____
Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: March 23, 2010

Date Mailed: March 23, 2010

2009-13010/LYL

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/lk

cc:

