

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: 2009-13802

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 March 12, 2008, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits to December 2007 alleging disability.

(2) On September 10, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical-Vocational Rule 202.17.

(3) On October 23, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On October 28, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On March 2, 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 202.17.

(6) Claimant is a 26-year-old man whose birth date is [REDACTED]. Claimant is 5' 10" tall and weighs 190 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 at [REDACTED] as a night stocker. Claimant has also worked a dietary aide and at [REDACTED] as a cashier.

(8) Claimant alleges as disabling impairments: rheumatoid arthritis, stiff knees, sore wrists, painful upper back and right ankle and limited range of motion in his shoulders.

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 2006. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that on [REDACTED] there was a [REDACTED] evaluation which indicated that claimant was a healthy looking adult male. His height was 5' 10" tall, his weight was 177 pounds. His standing posture was upright. His shoulders and the pelvis remained symmetrical bilaterally. In terms of ambulation, claimant was ambulating with a slightly wide base. There was no limp. He was not using assistive devices such as a cane or a walker. He can walk on his tiptoe as well as with his heels without any difficulty. When it comes to squatting, claimant attempted squatting and performed 50 percent and complained of pain in the knee. Examination of the cervical spine: The range of motion was normal. There was no evidence of cervical paravertebral muscle spasm or soft tissue tenderness. Both shoulders revealed active abduction of 180 degrees. Internal and external rotation remained normal. No atrophy over the shoulder girdle. Examination of elbows: Right elbow extension was -5 degrees, flexion 5 to 120 degrees. Pronation was full, supination was approximately 60 degrees. There was no swelling or deformity in the right elbow. The left elbow extension was -5 degrees. Flexion was 5 to 120 degrees. Pronation was full, supination was approximately 60 degrees. There was no evidence of swelling or deformity in the left elbow. Examination of the wrists: Right wrist dorsiflexion 30 degrees, palmer flexion 50 degrees, radial deviation 30

degrees. Ulnar deviation was 30 degrees. There was no swelling, deformity or synovial thickening. Left wrist dorsiflexion 30 degrees and there was no swelling or deformity in the left wrist. Examination of the hands: Claimant could make a full fist. There was no atrophy. The right hand fingers appeared somewhat tight and stiff but yet he had full range. The grip strength was tested on dynamometer that showed right hand 25 pounds, left hand 45 pounds. He is right handed. Examination of the lumbar spine: The flexion was 90 degrees. Extension was 30 degrees, side bending 20 degrees, dorsal lumbar motion 30 degrees. There was no evidence of muscle spasm or soft tissue tenderness in the lower back. Examination of the hips: Flexion was 110 degrees, extension 30 degrees. Abduction, adduction and the rotation remained within normal limits. Examination of the knees: Right knee flexion was 120 degree. Left knee flexion was 140 degrees, extension zero degrees bilaterally. Right knee shows slightly warm. There was mild synovial thickening. There was also mild effusion. There was no effusion in the left knee. Examination of the ankles: Remained within normal limits. His leg length measured equal bilaterally. Measurement of the quadriceps was 17.5 inches bilaterally. Calf measured as 13.5 inches bilaterally. Heel to the shin test is intact on both sides. Sensory examination with touch and pinwheel remain intact with all dermatomes in both upper and lower extremities. Deep tendon reflexes revealed upper extremities 1+ bilaterally. Knee and ankle reflexes 2+ bilaterally. Manual muscle strength examination showed normal grade in the upper extremities as well as normal grade in the lower extremities. Finger nose test was intact. His pinch grip was intact. He can open a jar using the right and the left hand without much difficulty. His balance without support was good. He showed no difficulty to get on and off the examination table. Sit to stand and supine to sit remained independent. The impression was rheumatoid arthritis. There was some limitation of the wrist primarily. There was some restricted extension of the elbow. Flexion

of the elbow was 120 degrees which is somewhat restricted also. There were no neurologic deficits noted. His other range of motion remains in the normal. He was fully independent in terms of his self care and activities of daily living. (Pages 36 and 37)

A Medical Examination Report in the file indicates that claimant is normal in all examination areas except that he has some neurological weakness and synovitis. The clinical impression was that claimant is deteriorating and that he can occasionally lift less than ten pounds. Claimant can stand or walk less than two hours in an eight hour day and can sit less than six hours in an eight hour day. Claimant should not use his extremities for repetitive actions such as simple grasping, reaching, pushing and pulling and fine manipulating and he cannot ever operate foot/legs controls. Claimant had no mental limitations. (Pages 30 and 31)

Claimant submitted a letter dated [REDACTED] from a [REDACTED] which indicates that claimant has severe chronic rheumatoid arthritis with multiple joint involvement. He has areas of persistent inflammation and restriction of range of motion including his elbows, wrists, fingers and knees. He has marked irritability and restriction of both shoulders as well. He has a severe ongoing disease that has not responded to significant treatment. He remains disabled and is unable to work.

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 durational requirement of 12 months or more. Claimant does have rheumatoid arthritis and testified that he has it since [REDACTED]. Therefore, claimant's impairments do meet duration. Claimant has reports of pain in multiple areas of his body; however, there are insufficient corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. The objective medical evidence in the record indicates that claimant does have rheumatoid arthritis but he does

not have any limitation of motion and no neurological deficits. The DHS-49 indicates that claimant is normal in all examination areas except that he does have some neurological weakness. There are no laboratory findings or x-ray reports which support the severe restrictions that the doctor gave him on [REDACTED]. The claimant's medical reports indicate that assistive devices are not medically required or needed for ambulation. Claimant can sit six hours in an eight hour workday and stand or walk less than two hours in an eight hour workday. The clinical impression that claimant is deteriorating; however, the only finding made is claimant experiences weakness. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. Although he does have rheumatoid arthritis which does have flare-ups, there is no clinical report that indicates that claimant has severe limitations on his ability to move. In short, the DHS-49 has restricted claimant from tasks associated with occupational functioning based upon claimant's report of pain (symptoms) rather than medical findings. Claimant did testify that he is able to shower and dress himself. However, the 49 indicates that claimant cannot use his upper extremities for simple grasping, reaching, pushing and pulling and fine manipulating on a continuous basis. This Administrative Law Judge finds that the DHS-49 is somewhat inconsistent. 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 to indicate that the claimant suffers mental limitations resulting from his physical condition. Claimant testified that he does not have any 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. This Administrative Law Judge finds that claimant could work as a dietary aide or as a cashier at [REDACTED] even with his impairments. There is insufficient objective medical evidence in the file upon which this Administrative Law Judge could base a finding that claimant is unable to perform work that he has engaged in in the past. 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 testified on the record that he can walk a quarter mile but that his knees hurt. He can stand for a half an hour at a time and can sit for one to two hours at a time. Claimant testified that he can shower and dress himself slowly and tie his shoes slowly but not touch his toes or bend at the waist or squat. Claimant testified that the heaviest weight he can carry is 15 pounds and he can carry less than 10 pounds repetitively. Claimant testified that he is right handed and that his joints hurt badly. Claimant testified that his level of pain on a scale from 1 to 10 without medication is 10 and with medication is an 8. Claimant testified that he continue to smoke four to six cigarettes a day and he has been trying to quit and his doctor has told him to quit. Claimant testified that in a typical day he gets up and slowly gets out of bed and goes to the bathroom, he

gets dressed, relaxes for the morning and reads and gets on the computer. Claimant testified he uses the computer for five to six hours a day and watches television for six hours a day. Claimant has a four-year-old son that he visits with two days a week and he stated that he usually watches his son play. Claimant testified that his everyday functioning is painful.

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. In addition, claimant did testify that he does receive some relief from his pain medication. 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 a younger individual (age 26), with a less 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 either. It should be noted that on August 19, 2008, the Social Security Administration denied claimant's application for SSI and stated that claimant was not disabled.

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: May 11, 2009

Date Mailed: May 11, 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:

