

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: 2009-15950
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 7, 2009
Calhoun County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, an in-person hearing was held on May 7, 2009. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED]

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and State Disability Assistance (SDA)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

(1) On August 28, 2008, claimant filed an application for Medical Assistance and State Disability Assistance as well as retroactive Medical Assistance benefits alleging disability.

(2) On September 17, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On September 22, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On December 16, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On March 31, 2009, the State Hearing Review Team again denied claimant's application.

(6) The hearing was held on May 7, 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 July 13, 2009.

(8) On July 16, 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) and unskilled work per 20 CFR 416.968(a) pursuant to Medical-Vocational Rule 202.13 and commented that this may be consistent with past relevant work. However, there is no detailed description of past work to determine this. In lieu of denying benefits as capable of performing past work a denial to other work will be used.

(9) Claimant is a 54-year-old man whose birth date is [REDACTED]. Claimant is 5' 10" tall and weighs 205 pounds. Claimant recently gained 20 pounds. Claimant attended the 9th grade and has a GED. Claimant is able to read and write and does have basic math skills.

(10) Claimant last worked in 2001 running a saw. The claimant worked as a self-employed log cutter for 15 years and in a poultry processing factory for two years. Claimant receives Food Assistance Program benefits and the Adult Medical Program.

(11) Claimant alleges as disabling impairments: peripheral vascular disease, knee and back pain, shortness of breath, left leg stent as well as several knee surgeries, cramping hands, left hip pain, and eyesight problems. Claimant alleges no mental impairments.

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 2001. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a Medical Examination Report dated [REDACTED] indicates that claimant was normal in all areas of examination except he had some weakness in the musculoskeletal area. Claimant was diagnosed with peripheral vascular disease and was 5' 9" and weighed 195 pounds and his blood pressure was 143/90. Claimant's condition was improving and he had no physical limitations. He did not need assistive devices for ambulation. Claimant could do simple grasping, reaching, pushing/pulling, and fine manipulating with both upper extremities and could operate foot and leg controls with both lower extremities. Claimant had no mental limitations. (Pages 146-147)

A [REDACTED] vascular consultation indicated that claimant's blood pressure was 140/81 on his right arm and on his left arm was 159/108. His height was 5' 9" and his heart rate was 76. Weight was 198 pounds and his BMI was 29. He was conscious, responsive and alert. The examination of his head and face was unremarkable. His abdominal examination was normal. Cardiovascular exam was normal. Respiratory examination showed he had lung auscultation revealing no rales, rhonchi, wheezing or rubs. His lymphatic exam, there was no neck, supraclavicular or axillary lymphadenopathy noted. Nails of fingers and toes did not demonstrate pitting or any other changes. No skin rash, subcutaneous nodules, lesions or ulcers observed. In the musculoskeletal area, muscle strength was full and strength symmetric, normal muscle tone without any atrophy or abnormal movements. In the vascular exam, the claimant had absent carotid bruits. The lower and/or upper extremity pulses revealed +3/4 brachial pulses bilaterally, +3/4 femoral pulses bilaterally, +1/4 popliteal pulses bilaterally, 0/4 posterior tibial pulses bilaterally and 0/4 dorsalis pedis pulses bilaterally. The impression was peripheral vascular disease and chronic obstructive pulmonary disease. (Page 141)

On [REDACTED], claimant was diagnosed with left leg peripheral vascular disease with severe claudication and he had a left femoropopliteal bypass, left external iliac balloon angioplasty and stent, left iliac angiogram, and left iliofemoral endarterectomy. No complications were encountered and his estimated blood loss was 200 mL and no blood was replaced. (Page 137)

There was an exercise stress test performed [REDACTED] indicating negative stress test for ischemia by EKG criteria. Claimant developed shortness of breath and fatigue but denied experiencing any chest pain. There was diminished exercise tolerance and no cardiac arrhythmia during the stress test. (Page 129)

Orthopedic notes dated [REDACTED] showed scars on the bilateral lower legs. He had mild swelling to the lateral aspect of the knee. Neurological and vascular examinations were normal. The impression was internal derangement with previous ACL reconstruction x3 with infection, mild degenerative joint disease of the right knee and infected right knee. (Page 55)

X-rays of the right knee dated [REDACTED] showed tunneled ACL repair, intact orthopedic hardware, knee effusion and tri-compartment osteoarthritis. (Page 61) In [REDACTED], the claimant reported that he had hyper-extended the knee and he had fallen two weeks prior to the exam. On exam he had joint line tenderness and the right knee was diffusely swollen. (Page 60)

In [REDACTED], the claimant had been working up until two weeks prior to the examination.

He worked for a tree service. He had five more sessions of physical therapy and was using a

knee brace he had at home. He was in no acute distress. (Page 58) A statement dated [REDACTED]

[REDACTED] indicated that claimant was able to return to work on [REDACTED] with limitations of

not ambulating without knee brace and no standing greater than 20 minutes per hour and no

climbing. (Page 68)

A DHS-49 form dated [REDACTED] indicated that claimant's right knee was swollen and he had joint line tenderness. The remainder of the examination was within normal limits. (Page 84) The doctor indicated that claimant did not medically require an assistive device for ambulation. However, the doctor was unable to determine how much the claimant could lift and stand/walk. (Page 83) This Administrative Law Judge incorporates a decision made September 23, 2008, Register Number 2008-15919, in its entirety into this decision.

At Step 2, the objective medical evidence in the record indicates that claimant does not have a severe impairment of combination of impairments which have lasted or will the durational requirement of 12 months of more. Although he did have problems with his knee, the right knee has improved. Claimant underwent a left femoropopliteal bypass and was expected to improve within six weeks from surgery. Claimant did develop peripheral vascular disease, but as of [REDACTED] he was normal in all areas and had no physical limitations. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. 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 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 and claimant did testify on the record that he doesn't have any mental impairments. 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 did work in a poultry processing factory and he should probably be able to perform that work even with his impairments. Claimant testified that he doesn't have a driver's license because of a DUI and that his nephew supports him. He cooks TV dinners and microwaves every day and that he cleans his room by picking up his clothes and doing laundry. He makes dream catchers and clocks as a hobby craft. Claimant testified that he can walk 1-1/2 to 2 blocks at a time and that he can stand 20 minutes and sit two hours at a time. Claimant testified that he can shower and dress himself and can squat but not well with his knee. He is able to bend at the waist, but not always tie his shoes and he can touch his toes if he is sitting. Claimant testified that the heaviest weight he can carry is 20 pounds and that he is right-handed. Claimant testified that his level of pain on a scale from 1 to 10 without medication is a 6/7 and with medication is a 4/5. Claimant testified that in a typical day he gets up, puts his shorts on, makes coffee, watches television, makes sandwiches, and sits on the deck or goes for a ride and uses the computer.

The Administrative Law Judge finds that claimant has not established that he can no longer perform any of his prior work. Claimant should be able to perform his prior work at doing

kitchen work even with his impairments. Therefore, claimant is also disqualified from receiving disability at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when

it involves sitting most of the time with some pushing and pulling of arm or leg controls....

20 CFR 416.967(b).

Claimant has submitted insufficient objective medical evidence to show 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 claimant testified on the record that he does not have any mental disorders but has chronic pain.

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. Claimant testified 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. Under the Medical-Vocational guidelines, a person with claimant's vocational profile of closely approaching advanced age at 54, a GED, and history of unskilled work is denied Medical Assistance benefits using Vocational Rule 202.13 as a guide.

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.

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 20, 2009

Date Mailed: August 20, 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:

