

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: 2009-16360
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 20, 2009
Wayne 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 20, 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 September 5, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On December 9, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical-Vocational Rule 202.10.

(3) On December 12, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On January 26, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On April 7, 2009, the State Hearing Review Team again denied claimant's application stating that it needed additional information in the form a pulmonary function study, a psychiatric examination, and a complete physical examination.

(6) The hearing was held on May 20, 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 20, 2009, the State Hearing Review Team again denied claimant's application stating that claimant has a non-severe impairment/condition per 20 CFR 416.920(c).

(9) Claimant is a 53-year-old man whose birth date is [REDACTED]. Claimant is 6' 1" tall and weighs 525 pounds. Claimant recently gained 20 to 30 pounds. Claimant attended the 9th grade and is currently working on his GED and attends classes Tuesdays and Wednesdays three hours each day. Claimant is able to read and write and does have basic math skills.

(10) Claimant last worked June 2007 for [REDACTED] where he was a resident specialist overseeing clients and buildings. Claimant has also worked as a security guard.

(11) Claimant alleges as disabling impairments: obesity, asthma, diabetes mellitus, depression, edema in his right leg, bronchitis, fast heart rate, hypertension, and back pain.

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 2007. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a Medical Examination Report dated June 4, 2008 indicates that claimant is normal in all examination areas except that he was extremely obese and depressed. Claimant was 6' 1" tall and 525 pounds. His blood pressure was 140/80 and he was right-hand dominant. His visual acuity best corrected was 20/40 in the right eye and 20/40 in the left eye. The clinical impression was that claimant was deteriorating and that he could occasionally lift 20 pounds or less and frequently lift 10 pounds

or over, but never lift 25 pounds or more. Claimant could walk or stand at least two hours in an eight-hour workday and sit less than six hours in an eight-hour workday. Claimant could use both lower extremities for operating foot and leg controls and could do simple grasping, reaching, and fine manipulating with both upper extremities. (p. A1-A2 of the new information)

A mental status examination indicates that claimant was a 53-year-old African American who was obese and appeared his stated age. He came to the appointment alone by driving a car. He had a goatee. He walked slowly without any support. He sat in a chair comfortably and did not show any bizarre behavior. He was 6' 1" tall and weighed 525 pounds. He was in touch with reality, but his self-esteem was low. His psychomotor activity was normal. When asked what he wants to do with his life he said that he wants to work. He has limited insight. Claimant's speech was clear, coherent, and goal-directed. Thinking processes were well organized and easy to follow. The claimant denied any hallucinations, delusions, or paranoid ideations. He denied suicidal or homicidal ideations. He has been feeling depressed since 1983. He admitted feeling helpless, hopeless, and useless. He denied manic or hypomanic episodes. He denied having any obsessions, compulsions, or anxiety attacks. The claimant was cooperative during the examination. His affect was appropriate to thought content and mood was calm. The claimant was alert and oriented to time, person, and place. Claimant was able to repeat 4 digits out of 4 forward and 4 out of 4 digits backward immediately. The claimant was able to recall 2 of 3 objects after five minutes. When asked to name the past few Presidents, the claimant stated, Obama and Kennedy. The claimant correctly stated his date of birth. When asked to name five large cities, the claimant said Detroit, New York, and Los Angeles. When asked about famous people, the claimant stated James Cagney and Whitney Houston. When asked to tell current events, the claimant said we have a new President. In calculations, claimant said $7+5=12$ and

6x5=30. When asked to subtract 7's from 100, the claimant said I don't know. Serial 3's from 20 were 17 and that was it. When asked to interpret the proverb "the grass is greener on the other side of the fence" the claimant stated "it's better on the other side". And when asked to interpret the proverb "don't cry over spilled milk", the claimant said "don't cry over nothing you can't change". When asked about the differences between a tree and bush, the claimant stated a tree is taller than a bush. When asked how they were alike, the claimant said they were both plants. In his judgment, when asked what the claimant would do if they found a stamped, addressed envelope, the claimant stated put it in the mailbox. When asked what he would do if he discovered a fire in a theater, the claimant said run to the exit. When asked to tell your future plans, the claimant said he wants to get a GED. (p. 84)

A physical examination performed June 4, 2009 indicates that on examination the claimant was alert and cooperative. He was very obese. He was not significantly dyspneic. He was coughing a little bit. The claimant weighted 525 pounds or more. His blood pressure was 140/80. Height was 6' 1". Vision without glasses was 20/40 on the left and 20/40 on the right and 20/40 bilaterally. Clinically, the claimant was not jaundiced. Claimant's gait was normal. The claimant was able to get on and off the examination table. The claimant could raise both arms above head level. Claimant was normocephalic. External eye movements were intact. Pupils were equal and regular, reactive to light and accommodation. The fundus was intact. ENT was benign. Neck was supple. There was no thyromegaly. No venous engorgement. Trachea was central. No carotid bruit. The chest moved normally on either side. Respiratory movements were normal. The chest was clear to auscultation and percussion. No rhonchi or rales. Heart size was normal. No audible murmur. JVD was not raised. Air entry was decreased on both sides. There were occasional expiratory rhonchi over both lung fields. There were also crepitations. No

adventitious sounds. Trachea was midline. The abdomen was soft and protuberant. No masses felt. Bowel sounds were normal. There was no evidence of hernia. Spleen was not palpable. No ascites. Straight leg raising test was equal bilaterally. All peripheral pulses were equal and good bilaterally. There was no wasting of muscles. Handgrip was equal. Cranial nerves II-XII were grossly intact. No gouty deformities or nodules noted. Sensory: touch, pinprick and sensation were normal. Plantar was flexor bilaterally. Cerebellar function was normal. Motor strength was equal bilaterally. Plantar reflex was flexor. The deep tendon reflexes were 2+ in the upper and lower extremities. Speech and memory appeared to be normal. Orientation was normal. The claimant's general health was good. No leg ulcers. (p. C2-C3)

A Medical Examination Report performed September 8, 2008 indicates that claimant was normal in all examination areas except that he was obese. He had no mental limitations and could use both lower extremities for operating foot and leg controls and could do simple grasping, reaching, and fine manipulating with both hands and arms.

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 no corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. There are no laboratory or x-ray findings listed on the DHS-49. The clinical impression is that claimant is deteriorating; however, the only finding made is claimant experiences tenderness in his musculature and he is obese. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, the DHS-49 has restricted

claimant from tasks associated with occupational functioning based upon the claimant's reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that claimant has met the evidentiary burden of proof can be made. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers mental limitations resulting from his reportedly depressed state. The mental residual functional capacity assessment in the record indicates that claimant had a basically normal mental status. 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 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).

For the foregoing 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 light work as a security guard and as a resident specialist overseeing clients in the building at the [REDACTED]. As a security guard does not require strenuous physical exertion, there is insufficient objective medical evidence 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 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 testified on the record that he does have a driver's license and does drive one or two times per month when he can borrow a car and he usually drives 2-1/2 miles to the doctor's office. Claimant does cook everyday and cooks things hotdogs, hamburgers, bacon and eggs. Claimant cleans his home by sweeping, wiping the furniture, and doing the dishes. Claimant testified that his hobby is fishing which the last time he went was August 2008. Claimant testified that he can walk less than one-half block, can stand for 20 minutes and sit for two hours at a time. Claimant is able to shower and dress himself but not squat and can only bend a little.

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'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 closely approaching advanced age individual (age 53), with a less than high school education and an unskilled work history, who is limited to light work is not considered disabled pursuant to Medical-Vocational Rule 202.12.

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: September 2, 2009

Date Mailed: September 2, 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:

