

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: 2009-16897
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 9, 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 July 9, 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 July 18, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On October 27, 2008, the Medical Review Team denied claimant's application stating that claimant's impairments were non-severe.

(3) On November 7, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On January 16, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On April 9, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing his past work as a cashier and commented that medical opinion is considered in light of CFR 416.927.

(6) Claimant is a 28-year-old man whose birth date is [REDACTED]. Claimant is 6' 1" tall and weighs 277 pounds. Claimant attended the 11th grade and has a GED. Claimant testified he is not able to read and write and has no math skills.

(7) Claimant last worked February 2007 as a cashier where he worked for two years. Claimant has also worked at [REDACTED] doing board or sign advertisements for two months.

(8) Claimant alleges as disabling impairments: adult deficit hyperactive disorder, depression, insomnia, hernia, back pain, and bipolar disorder.

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 [REDACTED] medical report indicates that claimant was brought to the office by his parents. His height was 71-1/4" tall and he weighed 273 pounds. His posture and gait were within normal limits. He said he forgets appointments and has to be reminded by his parents. Claimant's contact with reality was fairly intact. He did not know what self-esteem met. Motivation was described as fine. He did not feel good about himself. The claimant was spontaneous and answered all the questions in a goal-directed way. There were no formal thought disturbances or other problems in this area. The claimant said that he hears his own thoughts telling him life is not going nowhere. The voices started when he was 5. Thoughts tell him he has a felony and nobody will hire him. He denied any other psychotic symptoms. He feels worthless and said last year he was planning to hurt himself but did not attempt suicide. He had no suicidal thoughts or plans currently; however, sometimes he has some death wishes. He eats once a day and his sleep is increasing. Claimant's affect was constricted. He felt depressed all the time, every day. He smokes a lot. He felt that he has no future. He enjoys his life sometimes. Four to five times a day he feels like he cannot breathe, but he denies panic attacks. Claimant was orient x3. His immediate memory: The claimant was not able to repeat even four digits forward. The physician felt that he was

exaggerating. Claimant was not able to remember any of the objects after two minutes. Claimant's remote memory was decreased too. Claimant did not know any large cities and he was encouraged and said Inkster and Garden City. He did not know any famous people. Again, the doctor thought he was exaggerating. He did not know how to multiply. Claimant stated that $9+7=15$. He said that a tree and bush both have leaves and for differences he said the tree was taller. He said that if there was a fire in a theater he would tell someone. Claimant's GAF was 45 to 48. (Pages 10-11) Claimant has a Medical Examination Report in the file which indicates that claimant is normal in his general appearance, cardiovascular, musculoskeletal, but had an obese abdomen, mild congestion in his respiratory system, and bilateral cerumen in the HEENT. He had flex 5" from floor but he was unable to hyperextend and he had a depressed demeanor. Claimant was 6' 2" tall and 277 pounds. His blood pressure was 129/85 and he is left-hand dominant. He was obese and he was a smoker. He had a left inguinal hernia. The clinical impression was claimant was deteriorating. He could stand or walk less than two hours in an eight hour day but sit less than six hours in an eight day. Claimant did not need assistive devices for ambulation. Claimant could both upper extremities for simple grasping, reaching, pushing/pulling, and fine manipulating and he could use both feet and legs for operating foot and leg controls. Claimant had some limitations in his sustained concentration, reading/writing, and there was an indication of a learning disability but no clinical assessment to support. (Pages 21-22) The medical past work history indicates that claimant worked as a crew member at [REDACTED], as a cashier at [REDACTED], then worked as a crew member at [REDACTED], and worked at [REDACTED] and was able to keep the jobs for approximately a year to a year and a half each time. At least three of the jobs he quit. Claimant should be able to manage his benefit funds based upon his medical reports. A medical examination dated [REDACTED] indicates that

claimant's blood pressure was 150/80 and in his left arm was 150/82. His pulse was 60 and regular. His respiration was 14. His weight was 274 pounds and height was 74" without shoes. Claimant was pleasant and cooperative throughout the examination. His hearing appeared normal and speech was clear. Claimant exhibited a normal gait. Claimant did not use assistive devices for ambulation. There were no lesions appreciated nor was there cyanosis or clubbing. His visual acuity in his right eye was 20/25 and left eye 20/40 with glasses. The sclera was not icteric nor was there any conjunctival pallor. Pupils were equal and reactive to light and accommodation. The fundus appeared normal. His neck was supple with no thyroid masses or goiter. No bruits were appreciated over the carotid arteries. There was no lymphadenopathy. His chest AP diameter was grossly normal. Lungs were clear to auscultation without any adventitious sounds. No wheezing or rhonchi. His heart was normal S1 and S2 heard. No murmurs or gallops were appreciated. The heart did not appear to be enlarged clinically. The PMI was not displaced. The abdomen was soft and non-tender without distention. There were no masses felt nor was there enlargement of the spleen or liver. In the extremities and musculoskeletal area there were no obvious bony deformities. Range of motion of all joints checked was full. There was no tenderness, erythema, or effusion of any joint. Straight leg raising test was negative. There was no paravertebral muscle spasm. Peripheral pulses were easily palpated and symmetrical. There was no edema. There was no evidence of varicose veins. Grip strength was intact. The hands had full dexterity. The claimant was able to pick up a coin, button his shirt, and open a door without difficulty. The claimant had no difficulty getting on and off the examination table, no difficulty heel and toe walking, and no difficulty squatting. His range of motion in the flexion was 0-90 degrees, normal; extension was 0-25 degrees, normal; right lateral flexion was 0-25 degrees, normal; left lateral flexion was 0-25, which was normal. His motor strength was 5/5. Sensation

remained intact. Reflexes were present and symmetrical. The claimant was alert and oriented x3.
(Pages 7-8)

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. This Administrative Law Judge cannot give weight to the treating physician's DHS-49 as it is inconsistent with the objective medical evidence contained in the file. In addition, claimant did have hernia repair since the DHS-49 form and his condition has changed. There are no laboratory or x-ray findings listed in the DHS-49. The form indicates that assistive devices are not medically required for needed for ambulation. The clinical impression is that claimant is deteriorating; however, the only finding made is that claimant experiences tenderness in his musculature and that he does have an inguinal hernia. 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 claimant's reports of pain (symptoms) rather than medical findings. In addition, claimant's medical condition has changed since he got his inguinal hernia repaired. 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.

Claimant testified on the record that he does have several mental impairments.

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 in the record indicating claimant suffers mental limitations resulting from his reportedly depressed state. Claimant did testify that he cannot read and write; however, he was able to work at [REDACTED] and at [REDACTED] for several years. There is no mental residual functional capacity assessment in the record. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. Claimant was oriented to time, person, and place during the hearing. Claimant was able to answer all the questions at the hearing and was responsive to the questions. For these reasons, this Administrative Law Judge finds that claimant has failed to meet his burden of proof at Step 2. Claimant must be denied benefits at this step based upon his failure to meet the evidentiary burden.

If claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of claimant's condition does not give rise to a finding that he would meet a statutory listing in the code of federal regulations.

If claimant had not already been denied at Step 2, this Administrative Law Judge would have to deny him again at Step 4 based upon his ability to perform his past relevant work. Claimant's past relevant work was light work. As a person who worked at [REDACTED] or at [REDACTED] there is no 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 as he testified on the record that he does drive one time per day to the gas station and he also grocery shops every month and he needs help from his mom. Claimant testified that he does laundry and dishes and that he collects sports cards. Claimant can walk one block at a time and he stated that he can stand 10-15 minutes at a time and can sit for 15 minutes at a time and he is up and down all the time because he's restless. Claimant testified that he can shower and dress himself and that the heaviest weight he can carry is 10-15 pounds and that he is left-handed and there is nothing wrong with his hands and arms or his feet and legs. Claimant testified that his level of pain on a scale from 1 to 10 without medication is a 9 and with medication is a 3/4. Claimant continues to smoke six cigarettes a day even though his doctor has told him to quit. Claimant testified that he does lie down a majority of the day because his sleep is broken.

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 is not in compliance with his treatment program.

Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to claimant's ability to perform work. Therefore, this Administrative Law Judge finds that the objective medical evidence on the

record does not establish that claimant has no residual functional capacity. Claimant is disqualified from receiving disability at Step 5 based upon the fact that he has not established by objective medical evidence that he cannot perform light or sedentary work even with his impairments. Under the Medical-Vocational guidelines, a younger individual (age 28), with a 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. Claimant may benefit from a referral to Michigan Rehabilitation Services.

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 4, 2009

Date Mailed: August 4, 2009

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

LYL/vmc

cc:

