

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: 2009-20493

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 24, 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 June 24 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 February 26, 2008, claimant filed an application for Medical Assistance, State Disability Assistance and retroactive Medical Assistance benefits alleging disability.

(2) On February 3, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical Vocational Rule 202.22.

(3) On February 12, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On March 9, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On May 12, 2009, the State Hearing Review Team again denied claimant's application stating the claimant has a history of brain surgery due to intracranial aneurysm in November 2007. (Pages 15-16) The CT scan of the head confirmed the hemorrhage. (Page 41) In January 2009, a physical examination noted his height was 5' 7 ½" and his weight was 365 ½ pounds. His blood pressure reading was 140/100. He had a normal gait and stance. His grip strength was normal. He had a history of sleep apnea, being treated with a C-PAP machine. His diabetes was poorly controlled. There has been no treatment for seizures. The objective medical evidence presented does not establish a disability at the listing or equivalence level. The collective medical evidence shows that the claimant is capable of performing a wide range of sedentary work. The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of sedentary work. Therefore, based on the claimant's vocational profile of a younger individual, high school graduate and a skilled work history, MA-P is denied using Vocational Rule 201.29 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude all work activity at the above-stated level for 90 days.

(6) The hearing was held on June 24, 2009. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(7) The record was left open until July 24, 2009. Claimant did not provide information and the record was closed on April 7, 2010, after approximately eight months.

(8) On the date of hearing, claimant was a 38-year-old man whose birth date is [REDACTED]. Claimant is 5' 7 ½" tall and weighed 345 pounds. Claimant attended two years of college and last worked as a surveillance officer for [REDACTED]. Claimant has also worked at the [REDACTED] removing currency from the machine, for [REDACTED] checking ATM balances, and as a taxi driver.

(9) Claimant alleges as disabling impairments: diabetes mellitus, hypertension, shortness of breath, aneurysm and a seizure, constant headaches, with head, back and knee injuries.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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 2004. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a [REDACTED] medical examination, dated January 2, 2009, indicates that the claimant well developed, well

nourished, cooperative and in no acute distress. The examinee was awake, alert and oriented x3. The examinee was dressed appropriately and answered questions fairly well. In the vital signs, the height was 5' 7 ½", weight 365 ½ pounds, pulse was 92, respiratory rate 16. Blood pressure was 164/100, 140/100 and 140/110. Visual acuity without glasses was 20/25 on the right and 20/20 on the left. The HEENT was normocephalic and atraumatic. Eyes and lids were normal. There was no exophthalmos, icterus, conjunctiva, erythema or exudates noted. PERRLA, extraocular movements intact. Ears, no discharge in the external auditory canals. No bulging erythema, perforation of the visible tympanic membrane noted. Nose, there is no deformity, epistaxis or rhinorrhea. The mouth, the teeth are in fair repair. The neck was supple. No JVD noted. No tracheal deviation. No lymphadenopathy. Thyroid is not visible or palpable. ENT: external inspection of the ears and nose reveal no evidence of acute abnormality. Respiratory system: chest was symmetrical and equal to expansion. The lung fields were clear to auscultation and percussion bilaterally. There were no rales, rhonchi or wheezes noted. No retractions noted. No accessory muscle use noted, no cyanosis noted. There is no cough. In the cardiovascular, there was normal sinus rhythm. S1 and S2. No rubs, murmur or gallop. In the gastrointestinal: abdominal obesity. Soft, benign, non-distended. Non-tender with no guarding, rebound, palpable masses. Bowel sounds were present. Liver and spleen are not palpable. In the skin: There was right knee scar. No significant skin rashes or ulcers. In the extremities, no obvious spinal deformity, swelling or muscle spasm noted. Pedal pulses are 2+ bilaterally. There is no calf tenderness, clubbing, edema, varicose veins, brawny erythema, stasis, dermatitis, chronic leg ulcers, or muscle atrophy or joint deformity noted. In the bones and joints: The examinee does not use a cane or aid for walking. The examinee was able to get on and off the table without difficulty. Gait and stance were normal. Tandem walk, heel walk and toe walk were done slowly. Able to squat to 50% of the distance and recover and bend to 60% of the distance and recover.

Grip strength is equal bilaterally. The claimant is right-handed. Gross and fine dexterity appear bilaterally intact. Abduction of the shoulders is 0 to 150. Flexion of the knees was 0 to 150. Straight leg raising while lying is 0 to 50, while sitting is 0 to 90. In the neurological area: Generally, the patient is alert, awake and oriented to person, place and time. Cranial nerve II: Vision as stated in vital signs. III, IV and VI: No ptosis, or nystagmus. PERLLA: Pupils 2 mm bilaterally. V: No facial numbness. Symmetrical response to stimuli. VII: Symmetrical facial movements noted. VIII: Can hear normal conversation and whispered voice. IX and X: Swallowing intact. Gag reflex intact. Uvula midline. XI; Head and shoulder movements against resistance are equal. XII: No sign of tongue atrophy. No deviation with protrusion of tongue. Sensory functions: Intact to sharp and dull gross testing. Motor examination: Reveals fair muscle tone without flaccidity, spasticity or paralysis. Based upon the examination, the examinee was able to occasionally lift and carry 10 to 15 pounds and the examinee is able to stand or walk about 2 to 3 hours in an 8 hour workday with frequent breaks. He was able to sit for 6 hours in an 8-hour day with frequent breaks. The examinee was able to do simple grasping, reaching, pushing, pulling, and fine manipulation. He might have difficulty operating foot and leg controls due to obesity. The impression was that claimant had diabetes and his blood sugar ranges between 102 and 270, and he is taking his medication as prescribed. The examinee has obesity with a body mass index of greater than 60, waist circumference greater than 40. The examinee was in need of additional help with weight management and weight control and abdominal obesity. The examinee had a history of sleep apnea, using a C-PAP machine and he has a history of aneurysm of his brain status-post coiling. This was done in 2007. Claimant also has hypertension and is on multiple medications with poor control of blood pressure. (Medical Reports, pages 8-9)

Claimant testified on the record that he lives alone in a house and he is separated, and has no children under 18. Claimant testified that he does some odd jobs helping to clean up houses and handyman work as needed, 4 to 5 jobs a month, and he usually works 4 to 8 hours at a time. Claimant was receiving Adult Medical Program and Food Assistance Program benefits. Claimant does have a driver's license and does drive, but he doesn't have a vehicle so he takes the bus daily to his parents' house and his aunt's house. The bus ride is usually an hour or two. Claimant cooks two times per day and usually cooks microwave food. He grocery shops once per month, and needs help with bags and picking out what he needs to eat, and his girlfriend helps him. Claimant testified that he can walk one block, stand for 5 minutes, and sit for ½ an hour. He can shower and dress himself, but he needs help with washing his feet and back. Claimant testified that he cannot squat because of his knee surgery and that he can only bend over slightly. He can't tie his shoes and touch his toes. Claimant testified that the heaviest weight he can carry is 10 pounds and that he is right-handed, and that his hands and arms are shaky and his shoulders are sore. Claimant testified that his right leg swells, and his level of pain on a scale from 1 to 10 without medication is a 9, and with medication is a 7. Claimant testified that he does drink alcohol one time per week and he usually drinks two shots; and his doctor has told him to quit. Claimant testified that in a typical day he sits around and watches television 4 to 5 hours a day.

This Administrative Law Judge did read all of the medical documents contained in the file, which consisted of 47 pages of medical documents. It should be noted that claimant had an intracranial aneurysm on January 18, 2008 and had a cerebral angiography, with no complications from the surgery. (Medical Information, page 32)

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; 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 in the file. The clinical impression is that claimant is stable. 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, 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.

Claimant alleges the following disabling mental impairments: anxiety.

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 severe mental limitations. There is a no mental residual functional capacity assessment in the record. There is insufficient 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 oriented to time, person and place during the hearing. Claimant was able to answer all of the questions at the hearing and was responsive to the questions. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. For these reasons, this Administrative Law Judge finds that claimant has failed to meet his burden of proof

at Step 2. Claimant must be denied benefits at this step based upon his failure to meet the evidentiary burden.

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

If claimant had not already been denied at Step 2, this Administrative Law Judge would have to deny him again at Step 4 based upon his ability to perform his past relevant work. There is no evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work in which he has engaged in, in the past. Therefore, if claimant had not already been denied at Step 2, he would be denied again 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.

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. 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), with a high school education and an unskilled work history who is limited to light work is not considered disabled.

It should be noted that claimant does continue to drink alcohol despite the fact that his doctor has told him to quit. Claimant is not in compliance with his treatment program.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial gainful activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

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. BEM, Item 261, p. 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.

Adm
Departm

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

Date Signed: June 16, 2010

Date Mailed: June 17, 2010

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/cv

cc:

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