

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: 2009-22686
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 23, 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 23, 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 December 11, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On March 24, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On March 25, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On April 2, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On June 3, 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 202.10. The State Hearing Review Team 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.

(6) The hearing was held on July 23, 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 23, 2009.

(8) On July 28, 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 202.10 and commented that the new information submitted contained no objective medical information. The information submitted included a take home instruction form from the hospital and a substance abuse relapse prevention plan. The new information does not significantly change or alter the previous decision.

(9) Claimant is a 50-year-old man whose birth date is [REDACTED]. Claimant is 6' 4" tall and weighs 274 pounds. Claimant attended the 8th grade and has no GED. Claimant is able to read and write and does not have good math skills but can count money.

(10) Claimant last worked 2005 at [REDACTED] building gazebos. Claimant has also worked as a custodian, as a welder, and as a brick cleaner.

(11) Claimant alleges as disabling impairments: degenerative disc disease, depression, chest pain, liver problems, numbness, arthritis, eye problems, diabetes mellitus, and hypertension.

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 2005. 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 had a normal general appearance and was normal in all areas except for epigastric tenderness and some problems with lumbar pain and depression as well as hypertension. The clinical impression was that claimant was stable and he that he could occasionally lift 25 pounds, but never lift 50 pounds or more. Claimant could frequently lift 10 pounds or less. Claimant could stand or walk at least two hours in an eight-hour workday and sit about six hours in an eight-hour workday. Claimant was able to use his upper extremities for simple grasping, reaching, pushing/pulling, and fine manipulating and could operate foot and leg controls with both feet and legs. Claimant had no mental limitations.

(Pages 5-6)

There was a CT of the lumbosacral spine done on [REDACTED] which showed no spinal stenosis. There was minimal degenerative change at L5-S1, but L4-L5 and L3-L4 were normal. The facet joints were normal. The S.I. joint space was normal. There was no slippage. The impression was a negative lumbosacral spine CT study. Minimal facet joint degeneration was seen. The disc spaces were normal. The bony structures were normal. The pelvis was normal. There was a slight scoliosis to the right. (Page 7)

A second Medical Examination Report contained in the file done on [REDACTED] indicates that claimant was normal in all examination areas except that he had occasional chest pain with no murmurs, no JVD. He had impaired gait and walked with a cane. His motor strength was 4/5 in the lower left extremity and 5/5 in the right lower extremity. Claimant was 6' 1" and weighed 231 pounds and his blood pressure was 136/98 and he was right-hand dominant. He was

given a diagnosis of hypertension, diabetes type II, hypercholesteremia, lumbar disc disease with radiculopathy, as well as depression with anxiety and GERD. The clinical impression was that claimant was deteriorating and that he could occasionally lift 20 pounds and frequently lift less than 10 pounds. Claimant could stand or walk less than two hours in an eight-hour workday and sit less than six hours in an eight-hour workday and he used a cane to ambulate. It was determined that claimant should avoid repetitive actions of reaching and pulling because it exacerbated pain from his lumbar disc disease and he should not operate foot and leg controls. (Pages 18-19)

The Social Security Administration denied claimant's application for Social Security on [REDACTED] stating that claimant is not disabled. (Page 20)

A [REDACTED] medical form indicates that claimant was 6' 1" tall and weighed 231.5 pounds. His BMI was 30.54. His heart rate was 72, respiratory rate was 18, and blood pressure was 152/88. His pain was a 10/10. His general appearance was alert and oriented and he needed to walk around the room with a cane and sitting too long caused further pain to his lower back. (Page 30)

Another progress of note of [REDACTED] indicates that claimant was 6' 1" tall and weighed 238 pounds. His BMI was 31.40. His heart rate was 80, respiratory rate was 18, blood pressure was 144/100, and his temperature was 97.8. His general appearance was normal. The claimant's ears showed auditory canals were normal bilaterally, tympanic membranes normal bilaterally. He had a mucoid nasal discharge, stuffy, and turbinates red. He had tender maxillary sinuses and tender frontal sinuses. He has moist mucus membranes in the mouth. Lungs were clear to auscultation bilaterally, no wheezing, rhonchi, or rales. In his neck he had no JVD, no

cervical lymphadenopathy, and his thyroid was normal. His heart had regular rate and rhythm and he had normal S1 and S2 with no murmurs. (Pages 32-33)

Another progress note from [REDACTED] indicates that claimant had no clubbing, no edema; his sensations were normal, and no numbness or tingling in the lower extremities. His motor strength in the lower left extremity was 4/5 and the right lower extremity was 5/5. His lungs were clear to auscultation bilaterally and he had good air exchange. His heart had regular rate and rhythm. S1 and S2 were normal with no murmurs. (Pages 34-35)

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. The most recent DHS-49, Medical Examination Report, indicates that the clinical impression is that claimant is stable and that he does not need assistive devices for ambulation and that he can occasionally pick up 25 pounds or less and frequently lift 10 pounds or less and that he can stand or walk at least two hours in an eight-hour day and sit about six hours in an eight-hour day and can use both his upper and lower extremities for all activities and that he has no mental limitations. 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 testified on the record that he does have depression.

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 was able to answer all the questions at the hearing and was responsive to the questions. There is insufficient objective medical 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. 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. Claimant has worked as a custodian and as a brick cleaner. This Administrative Law Judge finds that there is insufficient objective medical evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work which 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. Claimant testified that he can walk a block, stand for 30-40 minutes, sit for 20-30 minutes, and is able to shower and dress himself but not tie his shoes or touch his toes. Claimant testified that he can carry 5-10 pounds and that he is right-handed and his hands cramp up and that his legs and feet have damaged nerves. Claimant testified that his level of pain on a scale from 1 to 10 without medication is a 9 and with medication is an 8-1/2. Claimant testified that in a typical day he watches television and moves around. 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 does retain bilateral hand dexterity. 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.

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 9, 2009

Date Mailed: September 10, 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

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