

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: 2009-2469
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 21, 2009
Mecosta 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 January 21, 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 31, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On August 21, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On September 4, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On October 9, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On October 29, 2008, the State Hearing Review Team denied claimant's application stating that claimant's impairments lacked duration per 20 CFR 416.909.

(6) Claimant is a 50-year-old man whose birth date is [REDACTED]. Claimant is 5'7 1/2" tall and weighs 162 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills.

(7) Claimant last worked three years ago painting bathrooms and doing cleanup and janitorial work. Claimant has also worked as a mason tender and as a laborer at a fruit farm.

(8) Claimant alleges as disabling impairments: heart disease, peripheral vascular disease, vision problems, back problems, hypertension, and depression.

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 approximately 2006. Therefore, claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant has mild left ventricular dysfunction but no evidence of reversible ischemia and fair exercise tolerance (Pg 132). Claimant had an ejection fraction at 52 percent and questionable mild apical hypokinesis. On [REDACTED], claimant had hypertension, hypercholesterol and reversible moderate perfusion abnormality of the inferoseptal myocardium with low normal ejection fraction (Pg 133). On [REDACTED], claimant had a percutaneous drug eluting stenting to the proximal left anterior descending artery and right iliac angiography (Pg 130). On [REDACTED], claimant was alert and oriented x 3. His lungs were clear bilaterally. His heart had regular S1 and S2. Groin site looked good. His distal pulses + 2. His vital signs included a blood pressure of 162/81, heart rate of 64, respirations at 16, temperature of 36.5 and pulse oximetry 100 percent on room air (Pg 99). On [REDACTED], from [REDACTED], claimant's blood pressure was 144/78 in the right arm and it was 146/80 in the left arm. The pulse was 62. His weight was 166 pounds. He was alert and oriented x 3. He is a well-developed and well-nourished gentleman slightly disheveled. His skin was warm and dry to touch. There was no evidence of ulcerations in the lower extremities. Both feet were warm. The face was symmetrical. The sclerae were clear. The oral mucosa was moist. The neck was supple. Jugular venous pressure was less than five

centimeters with water. The carotid pulses were intact bilaterally with no bruits. On cardiovascular examination, there was a S1 and S2 and no S3/S4 rubs, or heaves. Lungs had equal air entry bilaterally. No crackles, wheezing or egophony. The abdomen was soft and symmetric with positive bowel sounds. The femoral pulses on the left were + 2 and faint on the right. The popliteal pulses were also faint. The feet pulses were not present. The left femoral pulse was + 2. The left popliteal pulse was + 1. The pedal pulses were faint. Varicose veins on the left were present and enlarged and the left medial aspect of his thigh and extended to below the knee. No ulcerations, slightly hairless. His gait was intact. Claimant was assessed with severe peripheral vascular disease with previous angiogram. He had varicose veins that were currently active and painful and was given a prescription for pressure stockings. Claimant had hyperlipidemia and hypertension (Pg 108 and 109).

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 a duration of at least 12 months. The objective medical evidence on the record indicates that claimant did have a severely restrictive physical impairment. However, he did have stenting of his right internal iliac artery and a successful drug eluting stenting to the proximal LAD. At that time, the doctor recommended smoking cessation and aspirin treatment as well as anti-platelet therapy. This Administrative Law Judge finds that claimant does have a severe impairment which has lasted or will last the durational requirement of 12 months or more.

At Step 3, claimant's impairments do not rise to the level necessary to be specifically disabling as a matter of law.

At Step 4, claimant testified on the record that in a typical day he feeds his cats and dogs gets breakfast and tries to walk around for exercise. Claimant testified that he lives with his wife

and is supported by his wife. Claimant does have a driver's license and drives one or two times a month to the store which is about seven miles away. Claimant cooks eggs, bacon, potatoes one time per day. Claimant testified he does grocery shopping one time per month and needs help with making a list. Claimant testified that he does pick up at home, wash the stove and put dishes in the sink. Claimant also puts wood in the fire but that is not outside work. Claimant testified that his hobby is reading and that he can walk around the store, can stand for an hour, and sit for an hour at a time. Claimant testified that he cannot squat because his lower back hurts but he can bend at the waist and shower and dress himself, and tie his shoes. He can touch his toes if he is sitting down. Claimant testified the heaviest he can carry is 45 pounds and repetitively 15 pounds. Claimant is right-handed and has some arthritis in his hands and arms but otherwise they are okay. Claimant testified his level of pain on a scale of one to ten without medication is a ten and with medication it is a two. Claimant testified that he does smoke a half a pack of cigarettes per day and the doctor told him to quit. He has cut down.

Claimant is not in compliance with his treatment plan if he does continue to smoke even though he does heart disease.

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).

This Administrative Law Judge finds that claimant should be able to perform his prior work as a janitor, cleaning bathrooms and cleaning up even with his impairments. Claimant testified that the owner sold the business and that is why he no longer does this work. Claimant did not testify that he was too sick to work. Therefore, the claimant is disqualified from receiving disability at Step 4 because he should be able to perform some of his prior work even with his

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

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

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

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

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

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

Claimant has submitted insufficient objective medical evidence to show that he lacks the residual functional capacity to perform some other less strenuous tasks than in his prior employment or that he is physically unable to do the work that is demanded of him.

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).

Claimant's activities of daily living do not appear to be very limited and he should be able to perform light or sedentary work with the listed impairments. Claimant's testimony as to his limitations indicate that he should be able to perform light or sedentary work.

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 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 person, place and time. Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence as it relates to claimant's ability to perform work. In addition, claimant did testify that he does receive some substantial relief from his pain medication. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity. Claimant is disqualified from receiving disability at

Step 5 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, Pg. 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 to exceed 90 days, the claimant does not meet the disability criteria for State Disability Assistance, 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 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: February 2, 2009

Date Mailed: February 3, 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 receipt 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.

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