

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: 2009-27383
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 16, 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 September 16, 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 4, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On March 31, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On April 15, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On May 27, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On July 2, 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) pursuant to Medical-Vocational Rule 202.10 and commented that 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 light work. Therefore, based on the claimant's vocational profile of closely approaching advanced age with a limited education, MA-P is denied using Vocational Rule 202.10 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 work activity at the above stated level for 90 days.

(6) Claimant is a 50-year-old man whose birth date is [REDACTED]. Claimant is 5'11" tall and weighs 175 pounds. Claimant attended the 8th grade and has no GED. Claimant is able to read and write somewhat and does have basic math skills.

(7) Claimant last worked in 1998 delivering furniture and putting it together and doing home improvement. Claimant received SSI from 1999 to 2003 because of a gunshot to the upper leg and from [REDACTED] he was in prison and did no work.

(8) Claimant receives the Adult Medical Program and Food Assistance Program benefits.

(9) Claimant alleges as disabling impairments: hypertension, weak right arm, weak right leg, back and neck pain, nerve problems, weakness in both hands and arms due to being electrocuted in 2003, 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 1998. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a [REDACTED] physical examination indicates that claimant worked at a furniture store and then worked for a moving van. He last worked in the 80s and was in prison from [REDACTED]. His drug history is positive for using cocaine, crack, and heroin. He was positive for smoking since the age of 13, one pack a day and also has an alcohol history since the age of 14, once a day. He was well-developed, well-nourished, cooperative and in no acute distress. The claimant was awake, alert, and oriented x3. The claimant was dressed appropriately and answered questions fairly well. His height was 5' 10-1/2" tall and his weight was 176 pounds. His pulse was 84. Respiratory rate was 20. Blood pressure was 130/82 and 130/82. Visual acuity without glasses was 20/25 on the right and 20/25 on the left. His HEENT was normocephalic and atraumatic. Eyes: His lids were normal. There was no exophthalmos, icterus, conjunctiva, erythema, or exudates noted. PEERLA the extraocular movements were intact. Ears: There was no discharge in the external auditory canals. No bulging erythema, perforation of the visible tympanic membrane noted. Nose: There was no septal deformity, epistaxis, or rhinorrhea. Mouth: The teeth were in fair report. Neck was supple. No JVD noted. No tracheal deviation. No lymphadenopathy. Thyroid was not visible or palpable. ENT: External inspection of the ears and nose revealed no evidence of acute abnormality. In the respiratory system the 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 usage noted, no cyanosis noted. There was no cough. Cardiovascular had normal sinus rhythm, S1, and S2. No rubs, murmur, or gallop. Gastrointestinal revealed a soft, benign, non-distended abdomen. The abdomen was non-tender

with no guarding, rebound, palpable masses. Bowel sounds were present. Liver and spleen were not palpable. On the skin there were no significant rashes or ulcers. In the extremities there was minimal tenderness to palpation in the lower lumbar area. No obvious spinal deformity, swelling, or muscle spasm noted. Pedal pulses were 2+ bilaterally. There was no calf tenderness, clubbing, edema, varicose veins, brawny erythema, stasis dermatitis, chronic leg ulcers and muscle atrophy or joint deformity or enlargement was noted. In the bone and joints the claimant did not use a cane or aid for walking. He had a slight limp on the right side. He could not fully extend his elbows at both elbow joints. He was able to do tandem walk and heel walk. He was unable to do toe walk. He was able to squat 50% of the distance and recover and bend to 60% of the distance and recover. Grip strength was 4/5 on the left and 5/5 on the right. The claimant was right-handed. Gross and fine dexterity appeared bilaterally intact. Abduction of the shoulders was 0-140 degrees. Flexion of the knees was 0-150 degrees. Straight leg raising while lying was 0-50, while sitting 0-90. Neurologically the claimant was alert, awake, and oriented to person, place, and time. Cranial Nerve II: Vision as stated in vital signs. III, IV, VI: No ptosis, 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, X: Swallowing intact. Gag reflex intact. Uvula midline. XI: Head and shoulder movement against resistance was equal. XII: No sign of tongue atrophy. No deviation with protrusion of tongue. Sensory Functions: Intact to sharp and dull gross testing. Motor Exam: Revealed fair muscle tone without flaccidity, spasticity, or paralysis. Inability to fully extend his arms at the shoulder joint. His right hand at the middle and ring fingers had slightly decreased range of motion of the DIP joints and he could not flex at the DIP joint and at the PIP joints limited flexion as well as at the metacarpophalangeal joint in the right hand. The impression was

hypertension. His blood pressure was under fair control, borderline on exam today. He had chronic back pain and upper extremity pain with paresthesias. (pp. 4-5)

The Social Security Administration denied claimant's application [REDACTED]. A Medical Examination Report in the file indicates the clinical impression was that claimant was stable and that he could occasionally carry 10 pounds or less and he can stand or walk for three to four hours in an eight-hour workday and sit about six hours in an eight-hour workday. He could use his left upper extremity for simple grasping, reaching, pushing/pulling, and fine manipulating and he could use his left foot for operating foot and leg controls. (p. 15-16)

A physical capacities assessment dated [REDACTED] indicates that claimant should not work around machinery with moving parts, unprotected heights, and driving should be avoided. In his right leg he had some deformity from a gunshot wound from [REDACTED] and he had muscle removed and a skin graft done. Claimant had reduced strength and pain in his right leg. In his bilaterally arms he had reduced strength and range of motion and in his right hand he was unable to grip or grasp and it remained closed unless pried open. He had reduced sensation in all fingers and he was unable to extend his arms fully. (pp. 1-2)

At Step 2, the objective medical evidence on the record indicates that claimant has established that he has a severe impairment or combination of impairments which has lasted or will last the durational requirement of 12 months or more. Claimant does have some reduced strength in his upper extremities as well as his right leg. Claimant does not retain bilateral manual hand dexterity because he cannot use his right hand which he can only open if he pries it open. Therefore, claimant is not disqualified from receiving disability at Step 2.

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

At Step 4, claimant testified on the record that he doesn't have a driver's license and he lives in a shelter. He takes the bus one to two times per week and usually rides about an hour. Claimant doesn't cook because the shelter does it, but he does grocery shop one or two times per month with no help. Claimant does clean his area by making his bed and doing his own laundry. Claimant can walk one block with a cane, but his cane is not prescribed. Claimant testified that he can stand for 15 minutes and sit with no limits and that his back and neck hurt all the time. He cannot squat or bend at the waist much. Claimant is able to shower and dress himself and tie his shoes. The heaviest weight he can carry is a gallon of milk in his left hand. Claimant testified that he is right-handed and that he has numbness and nerve problems and he can't grip with his right hand at all. Claimant testified that his level of pain on a scale from 1 to 10 without medication is a 6/7 and a 4/5 with medication. Claimant testified that in a typical day he gets up and goes to his room, brushes his teeth, dresses, and makes his bed.

At Step 4, the Administrative Law Judge finds that claimant has established that he can probably no longer perform any of his prior work as a furniture deliver or assembler. Therefore, claimant is not disqualified from receiving disability 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).

This Administrative Law Judge finds that in order to perform sedentary work, claimant would have to retain bilateral manual hand dexterity which he does not have. Although he would probably be able to perform other duties of sedentary work, he does have limited education. Claimant would not be able to perform light work as he is limited to lifting less than 10 pounds and light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying

objects weighing up to 10 pounds. The job also requires a good deal of walking and standing and claimant has problems with his right leg. Therefore, this Administrative Law Judge finds that claimant has established by the necessary, competent, material, and substantial evidence on the record that he is disabled for purposes of Medical Assistance and State Disability Assistance benefits because he probably cannot perform even sedentary work based upon his limited education, his lack of bilateral hand dexterity, and his limited ability to walk.

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. This Administrative Law Judge finds that claimant does meet the definition of disabled under the Medical Assistance program and therefore would also meet the definition of disabled under the State Disability Assistance program because his disability will exceed 90 days.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department did not appropriately establish on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance and State Disability Assistance benefits. The claimant cannot currently perform a wide range of either light or sedentary work with his impairments. The department has not established its case by a preponderance of the evidence.

Accordingly, the department's decision is REVERSED. The department is ORDERED to reinstate claimant's December 4, 2008 Medical Assistance and State Disability Assistance benefit application. The department must determine if all other non-medical eligibility criteria

are met. The department shall inform the claimant of the determination in writing. The department shall conduct a medical review of claimant's condition in September 2010 at which time a complete physical examination with range of motion testing and an updated DHS-49 shall be provided.

/s/

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

Date Signed: November 9, 2009

Date Mailed: November 9, 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:

A large black rectangular redaction box covering several lines of text in the cc field.