

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: 2009-31303

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

September 17, 2009

Genesee 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, an in-person hearing was held on September 17, 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 April 6, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On May 27, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On June 1, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On June 29, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On August 14, 2009, the State Hearing Review Team again denied claimant's application stating that it had insufficient evidence.

(6) The hearing was held on September 17, 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 September 18, 2009.

(8) On September 22, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The claimant has a history of subdural hematoma which was evacuated. He also had cerebral aneurysm in [REDACTED]. The claimant has a seizure disorder but had run out of his medications. He also has a history of alcohol and cocaine use. In [REDACTED] he tested positive for cocaine and at the [REDACTED] mental status he had a strong odor of alcohol. His examination in [REDACTED] was basically unremarkable but he was not totally cooperative. His mental status did not show any significant thought disorder. Public Law 104-121 is cited due to the materiality of drug and alcohol abuse. 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 simple, unskilled, medium work avoiding unprotected heights and dangerous moving machinery. In lieu of detailed work history, the claimant will be returned to other work. Therefore, based on the claimant's vocational profile of closely approaching advanced age at 50, a limited education and a history of unskilled work, MA-P is denied using Vocational Rule 203.18 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.

(9) Claimant is a 50-year-old man whose birth date is [REDACTED]. Claimant is 5'10" tall and weighs 140 pounds. Claimant recently lost 15 pounds. Claimant attended the 11th grade and has no GED. Claimant is able to read and write and does have basic math skills.

(10) Claimant last worked in 2003 as a chore provider. Claimant has also worked as a machine operator and as a painter and landscaper.

(11) Claimant alleges as disabling impairments: headaches, seizures, a bad disc in the back, uncontrolled hypertension, a rod in his right leg from a prior break, an aneurysm in [REDACTED] and a subdural hematoma more recently.

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 2003. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a mental status exam dated [REDACTED] showed that claimant had a strong odor of alcohol. Speech was understandable and he presented his ideas in a logical, coherent fashion. His affect was characterized by frustration and irritability, with loud laughter present at other times. Diagnosis included reactive depression secondary to homelessness and medical problems and a probable history of alcoholism and a history of brain aneurysm.

In [REDACTED] a mental status exam showed he was spontaneous and organized. There was no evidence of psychosis. His affect was appropriate to mood. Diagnosis at that time included history of alcohol and cocaine abuse, rule out cocaine and alcohol abuse, and depressive disorder. (Records from DDS)

A physical examination dated [REDACTED] showed that claimant's neurological findings appeared to be within normal limits. Dexterity appeared unimpaired. He would not participate in most forms of range of motion testing. He walked without assistance. The claimant reported he has had two seizures in a week but he was unsure what type of seizure. He ran out of his medications. (Records from DDS)

In a mental exam dated [REDACTED] from [REDACTED] claimant was oriented and stated that it was about the [REDACTED] of [REDACTED] and it was Wednesday a little after 2:00 p.m. He stated his name was [REDACTED] and that the doctor he was seeing was a psychiatrist or something. He repeated five numbers forward and four numbers backward and recalled one of three objects three minutes later. The past few presidents were I don't even know—Mick Jagger, I don't recall. His date of birth was given as [REDACTED]. Five large cities were New York, Flint, Detroit, California, and Washington. Current famous people were Mick Jagger, Michael Jackson, and James Brown. On calculation tasks, $100-7$ =about 93, about 84 or 85, and 78. $2+3=5$, $7+9$ =about 14, $3 \times 8=24$, and $7 \times 9=52$ or something. In abstract thinking, when given the grass is greener on the other side of the fence, claimant interpreted it to mean that it depends on what side of the fence you're on, if you're on the side with an empty house that could be a place to stay for the night and don't cry over spilled milk was interpreted to mean pain and suffering—it won't do you no good no how. A bush and a tree were alike in that they got leaves and different in that a tree is a tree and a bush is a bush—the bush don't even grow on a tree. On judgment questions claimant would probably put a stamped addressed envelope that he found in the nearest postal box or just leave it there. If he discovered a fire in a theater he stated it was time to go unless the movie was good and laughed.

A Medical Examination Report dated [REDACTED] indicates that claimant had used drugs or alcohol prior to his visit. The doctor was unable to accurately assess him. However, he was normal in his respiratory and cardiovascular areas and in his abdominal area except he had a midline well-healed scar. The right knee had exaggerated knee jerks otherwise was 2+ and 4+. Neurologically he had no nystagmus and was photophobic. He was alert, smelled of alcohol, and his mood varied from calm to angry. He was 5'11" tall and weighed 141 pounds and his blood pressure was 134/87. (pp. 3-4)

At Step 2, claimant has the burden of proof of establishing that he has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. There is insufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant testified on the record that he is homeless and single with no children under 18. He walks or takes the bus when he needs to go places and he makes sandwiches and uses the microwave for cooking purposes. He goes to the grocery store and picks out what he wants. He fishes every other week. He stated that he can walk 6-7 blocks, stand 15-20 minutes at a time, and sit for 2-3 hours at a time. Claimant is able to shower and dress himself, but not squat because of his bad back and the rod in his leg and stated that he can't bend at the waist because it hurts but he can sometimes tie his shoes but not touch his toes. Claimant testified that he can carry three pounds and that he is right-handed and that his right shoulder gives him some problems. Claimant testified that his level of pain on a scale from 1 to 10 without medication is 10/11 and with medication is an 8. Claimant testified that he does smoke a half a pack of cigarettes per day and hasn't discussed quitting with his doctor. Claimant testified that he does drink a can of beer here and there but he has never used any illegal drugs. Claimant testified that in a typical day he looks for a place to stay.

There is no medical finding that claimant's condition is deteriorating. Claimant's condition appears to be 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, the 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.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers mental limitations resulting from his reportedly depressed state. There is no Mental Residual Functional Capacity Assessment in the record. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. For these reasons, this Administrative Law Judge finds that claimant has failed to meet his burden of proof at Step 2. Claimant must be denied benefits at this step based upon his failure to meet the evidentiary burden.

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

If claimant had not already been denied at Step 2, this Administrative Law Judge would have to deny him again at Step 4 based upon his ability to perform his past relevant work. Claimant's past relevant work was light as he was a chore provider. Most of the activities of a chore provider do not require strenuous physical exertion and claimant did not testify that he used to lift patients or do personal care for patients. Therefore, 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. Lastly, 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/psychiatric 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. The claimant's testimony as to his limitations indicates he that he should be able to perform light or sedentary work.

The Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) is material to a person's disability and when benefits will or will not be approved. The regulations require the disability analysis be completed prior to a determination of whether a person's drug and alcohol use is material. It is only when a person meets the disability criterion, as set forth in the regulations, that the issue of materiality becomes relevant. In such cases, the regulations require a sixth step to determine the materiality of DAA to a person's disability.

When the record contains evidence of DAA, a determination must be made whether or not the person would continue to be disabled if the individual stopped using drugs or alcohol. The trier of fact must determine what, if any, of the physical or mental limitations would remain if the person were to stop the use of the drugs or alcohol and whether any of these remaining limitations would be disabling.

In 1996 Congress amended the Social Security Act to preclude the award of RSDI and SSI benefits when alcoholism or drug addiction materially contributes to the claim of disability. The 1996 amendment provides that individuals should not be considered to be disabled for purposes of disability if drug addiction or alcoholism would be a contributing factor material to the determination of disability. Legislation, Public Law 104-121, Section 105(b)(1), 110 STAT. 853, 42 USC 423(d)(2)(C), 1382(c)(a)(3)(J) Supplement Five 1999.

Claimant testified on the record that he does have seizures and headaches.

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. In addition, based upon the claimant's medical reports, it is documented that he has use of alcohol as well as tobacco and cocaine which would have contributed to his physical and any alleged mental problems. 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. Claimant was oriented to time and place during the hearing and he was able to come to the hearing on his own. Claimant was able to answer all the questions at the hearing and was responsive to the questions. 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: November 10, 2009

Date Mailed: November 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

cc:

