

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: 2009-36717
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 18, 2009
Oakland 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 November 18, 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 May 12, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On July 22, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On July 28, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On August 3, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On October 1, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: Claimant is capable of performing other work in the form of light work per 20 CFR 416.967(b) pursuant to Medical Vocational Rule 202.17.

(6) Claimant is a 45-year-old man whose birth date is [REDACTED]. Claimant is 5' 9" tall and weighs 242 pounds. Claimant attended the 7th grade and has no GED. Claimant testified that he cannot read or write and has very little math skills.

(10) Claimant last worked in 1979 as a cook. Claimant has also worked in tree service and painting and irrigation.

(11) Claimant alleges as disabling impairments: Learning disability, heart problems, shortness of breath, stroke, asthma, back pain as well as illiteracy.

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 1979. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that the psychological test results, Academic Achievement Assessment: Claimant's scores were extremely low, three of the standard scores (55) being the lowest possible standard score. He appeared to exhibit his best effort. At one point he stated that he hoped the examiner was not disappointed in his academic achievement performance. Intellectual Assessment: The Verbal Comprehension Index Score was 85, the Perceptual Reasoning Index Score was 88, the Working Memory Index Score was 92, Processing Speed Index Score was 84 and the Full Scale IQ was 84 which is in the low average category of intelligence. None of the claimant's index scores differ significantly from any other Index Score. There was no evidence of psychotic processes apparent on the intelligence testing.

Claimant rate of speech was normal, his articulation was normal, as was the volume. His grammar, syntax and vocabulary were consistent with an individual of his age. The quality of his speech was generally coherent and logical, if not unusual at times, tangential. Adequate rapport was established for the purpose of evaluation. He correctly stated the month, day of the month and year and also the correct day of the week and location of the evaluation. He was able to correctly recall 2 of 3 objects after three minutes. He was able to correctly recall 6 digits

forward and 5 digits backward. As for Serial 7s he was able to correctly do 4 of 5 attempted Serial 7s. He commented, “math was my best subject”. He stated the current and immediate past presidents of the United States. As for naming 5 large U.S. cities, he commented “I don’t even know”. He also stated he was unable to name any famous living people. As for calculations he was able to do 7 of 8 single digit addition, subtraction, multiplication and division problems, although on one occasion he made an error and then corrected it and that was considered as a correct response. He stated the grass is greener proverb means people are always thinking the people next door have better stuff than they do, and they are always envious of them. As for the spilled milk proverb, he stated it means don’t cry because accidents happen. He stated that a bush and a tree are alike in that they both are from a fern and both have leaves and as for differences he stated a bush and a tree were different in that the bush was smaller and the tree was bigger. He indicated if he found a stamped, sealed and addressed envelope in the street, that it should be taken to the bank and mailed and that he stated in his neighborhood he would know the addresses so he would take it over to the person’s house and give it to them but never open anybody’s mail because it was a federal offense. As for a fire in the theater, he would tell everyone else but don’t start a panic.

His diagnosis was alcohol abuse and alcohol dependence, personality disorder, reported closed head injury, high blood pressure and occupational problems and his GAF was 55 and his prognosis was poor. (pgs. 235-236)

A drug screen of [REDACTED], claimant was positive for opiates. (pg. 85) On [REDACTED] [REDACTED], a neurological assessment indicated that he was oriented appropriately for age, he was alert and awake and he responded appropriately. He was calm. He was an oriented to person, place and time. He had clear speech and normal strength and equal grasp. (pg. 172)

The [REDACTED] report dated [REDACTED] indicates that claimant had a ventricular ejection fraction estimated to be 60-65%. All segments are normal. His left atrial size was normal. His right atrial size was normal. The ventricular cavity size was normal, wall thickness was normal and the free wall contraction was normal. The aorta appeared to be structurally normal. The aortic valve was composed of three leaflets which appear normally formed. Normal doppler interrogation flow patterns with stenosis are insufficient. The mitral valve had no evidence of mitral stenosis. There was trace and clinically insignificant mitral regurgitation present. The tricuspid valve was structurally normal with mild tricuspid regurgitation present. The spectral doppler derived peak systolic velocity across the tricuspid valves were 2.38 m/s, indicating a peak right ventricular pressure of 22.7 mmHg above the right atrial pressure. The pulmonic valve was normal. No pulmonic valvular insufficiency was seen. No pericardial effusion was seen. (pgs. 149-150)

A CT scan was done on [REDACTED] and indicated no evidence of thoracic aorta aneurysm or dissection. No evidence of pulmonary embolism. Multiple nonspecific subcentimeter lymph nodes in the paratracheal and subcarinal region. He had mild degenerative changes in the lower thoracic spine. No evidence of aneurysm or dissection of the abdominal aorta. There were bilateral renal papilla calcifications. There was a 3 mm non-obstructive calculus in the mid pole of the right kidney. No evidence of aneurysm or dissection. There was a 1.4 cm left renal cyst. (pgs. 244-245)

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 no clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment that has lasted a duration of the required 12

months or more. Claimant has reports of pain in multiple areas of his body; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. 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. The mental assessment in the record indicates that claimant was oriented to time, person and place. 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. There is no objective medical/psychiatric evidence contained in the file of depression or cognitive dysfunction that is so severe that it would prevent claimant from working at any job. 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 past relevant work as a cook. 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 for the sake of argument 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).q

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 testified that he lives in his parent's home and lives with his girlfriend. That he is single with no children under 18. Claimant testified he does receive Food Assistance Program benefits and has no income. Claimant testified that he does have a driver's license but he doesn't drive because he doesn't have a car. Claimant testified he doesn't cook but usually microwaves TV dinners. Claimant does grocery shop two times per week and his girlfriend takes him. Claimant testified that he does take the garbage out and he likes to go fishing but hasn't gone this year. Claimant testified that the heaviest weight he can carry is 20 pounds, he is right-handed and his hands and arms are fine but his legs and feet have numbness and pain. Claimant testified he can stand for ½ to an hour, walk for ½ mile, shower and dress himself, sit for ½ to an hour and squat and bend at the waist. Claimant testified that he can tie his shoes and that he can not touch his toes. Claimant did not

allege that he had any pain and stated that he is an alcoholic and drinks about a point of liquor per day.

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.

Claimant's testimony and the information indicate that claimant has a history of tobacco and alcohol abuse. Applicable hearing is the Drug Abuse and Alcohol (DA&A) 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. The law indicates that individuals are not eligible and/or are not disabled where drug addiction or alcoholism is a contributing factor material to the determination of disability. After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that claimant does not meet the statutory disability definition under the authority of the DA&A Legislation because her substance abuse is material to her alleged impairment and alleged disability.

Under the Medical-Vocational guidelines, a younger individual (age 45), with a less than high school education and an unskilled work history who is limited to light work is not considered disabled.

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, 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.

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

Date Signed: March 15, 2010

Date Mailed: March 16, 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.

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