

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: 2009-37249

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

November 10, 2009

Macomb 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 10, 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 3, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) Claimant filed a second application on March 23, 2009.

(3) On April 10, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical Vocational Rule 202.22.

(4) On April 14, 2009, the department caseworker sent claimant notice that his application was denied.

(5) On April 24, 2009, claimant filed a request for a hearing to contest the department's negative action.

(6) On October 2, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the claimant had a left hand injury and eventual below the elbow amputation of the left hand. He was able to work after his amputation until the factory went out of business. The claimant has some discomfort in his right shoulder and elbow but had normal grip with no limitation of function on the right hand/arm. 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 light, unskilled, one-handed work. In lieu of detailed work history, the claimant will be returned to other work. Therefore, based on the claimant's vocational profile of a younger individual, high school equivalent education and a history of unskilled and semi-skilled work, MA-P is denied using Vocational Rule 202.20 and 201.27 as guides. 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.

(7) Claimant is a 44-year-old man whose birth date is [REDACTED]. Claimant is 5'10" tall and weighs 160 pounds. Claimant recently lost 30 pounds. Claimant has a GED and one year of college in micro computers. Claimant testified that he is able to read but cannot

really write because his left hand was his dominant hand. Claimant testified that he does have basic math skills.

(8) Claimant last worked February 2008 for [REDACTED] where he drove a semi truck for which you need a special permit and he has too tickets so he no longer has the license. Claimant also worked as a receiver, cashier, and stocker at [REDACTED] and for [REDACTED] as a machine operator where he crushed his hand.

(9) Claimant received unemployment compensation benefits in the amount of \$232 per week.

(10) Claimant alleges as disabling impairments: left hand amputation from the elbow down which was amputated approximately 20 years ago, pain in the right arm and side, shoulder, and head as well as carpal tunnel syndrome on the right wrist and strained left foot pain.

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 February 2008. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a [REDACTED] [REDACTED] examination indicates that claimant was a 42-year-old Caucasian male. His height was 5'9" and he weighed 176 pounds and his blood pressure was 119/77, pulse was 64, and respiratory rate was 16. His HEENT: Normocephalic. No alopecia. No lesions on the scalp. No facial weakness. Ears: His hearing was normal. Eyes: Pupils were equal and reactive to light and accommodation. Sclera was non-icteric. No conjunctivitis. Vision without glasses was 20/25 on the right and 20/20 on the left. Claimant had upper dentures. No gingivitis, no tongue deviation, no difficulty with swallowing or speech. Neck: Claimant had no adenopathy. No thyroid enlargement. No abnormal bruits. Heart: There was regular sinus rhythm. No arrhythmia and no murmurs or gallop. Lungs: Clear with no rales or wheezing. No tenderness or hernias in the abdomen and no organomegaly. In the extremities and musculoskeletal area: There was no edema or phlebitis of the lower extremities. He had a tattoo on the right arm. There was amputation just below the left elbow of the left arm. He had some discomfort of the right shoulder and right elbow. There was no limitation of function of the left arm. He had pain on dorsiflexion and palmar flexion of the right wrist. Grip in the right hand was normal. Balance was normal. The impression was that the claimant had an amputated left hand secondary to a crush injury, as well as possible carpal tunnel syndrome of the right hand and depression. The medical source statement indicted that claimant wanted to work, but was told he was not able to

because of the amputation of the left arm. He should be evaluated for carpal tunnel syndrome and he should be able to work if he can find a job that does not require the use of both hands.

(pp. 3-4)

Claimant testified on the record that lives in his sister's house and that he is divorced and has no children under 18. Claimant receives \$232 per week in unemployment compensation benefits and he receives Food Assistance Program benefits from the Department of Human Services. Claimant does drive one time per day and usually to the store which is about 3 miles one way. Claimant does microwave food and does grocery shop one time per month with no help. Claimant does not clean his house or do any outside work and has no hobbies. Claimant testified on the record that he can stand for 2 hours, sit for 2 hours, walk for 2 miles, and squat, bend at the waist, shower and dress himself but not tie his shoes but he can touch his toes. Claimant testified that it usually takes him about 2 hours to get dressed because he can only do the buttons very slowly because he only has the one arm. Claimant testified that he was left-handed and that his right hand has carpal tunnel syndrome and is always painful because of overuse. Claimant testified that the heaviest weight he can carry is 3 pounds and that he does smoke a half a pack of cigarettes per day and his doctor has not told him to quit. Claimant testified that he does smoke marijuana daily for pain. Claimant testified that he doesn't go to the doctor because he has no insurance and that there is no work that he thinks he can possibly do at this time because he has put in application for jobs but he is never called back.

Claimant did apply on December 3, 2008 and was not denied by the Medical Review Team until April 10, 2009. Therefore, the department should determine whether or not he is eligible to receive the Adult Medical Program because there was an open enrollment period during the month on March 2009.

Claimant does receive unemployment compensation benefits. In order to be eligible to receive unemployment compensation benefits, an individual must be available for and seeking full-time work. Under certain circumstances, a person with a disability may be able to limit his or her availability for work to part-time only. If a claimant can qualify for unemployment compensation by:

- (1) Providing documentation from a licensed physician which establishes that,
 - (a) he or she has a physical or mental impairment that is chronic or expected to be long-term or permanent, and
 - (b) the impairment leaves him or her unable to work full-time.
- (2) Demonstrating that the impairment does not effectively remove him or her from the workforce.

Even though claimant does have his left arm amputated, the objective medical evidence in the record does not indicate that claimant has any other impairment. In addition, he is receiving unemployment compensation benefits which means he holds himself out to be monetarily eligible, totally unemployed, but as being physically and mentally able to work, and being available for and seeking work. Therefore, at Step 2, claimant has not established that he has a severe impairment or combination of impairments which have lasted or will last the durational requirement of 12 months or more. Claimant's impairments do not meet severity even though he does have a left arm amputation, because he did work after the amputation and does receive unemployment compensation benefits. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment. Although claimant did testify that he does have some pain in right hand, there is no evidence of carpal tunnel syndrome or other impairment in the medical records.

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 was laid off from driving a semi truck and indicated that he got too many tickets but was not fired from his job because he was unable to perform the essential tasks of the job. 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. 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 and he should be able to perform light or sedentary work even with his impairments.

Examples of light or sedentary (one-handed), unskilled jobs that claimant can do: are an usher, counter clerk, surveillance system monitor and a furniture/rental consultant in a retail business. County business patterns show that over 751,000 workers are employed in Michigan retail industries, indicating that such jobs exist in significant numbers in this region's economy. Over 30,000 workers are employed in Michigan in amusement and recreational services in which usher jobs are prevalent. Over 15,000 people are employed in public transportation and over 127,000 are employed in general merchandise stores, photo finishing, laboratories and photography supply stores, indicating such jobs exist in significant numbers in this region's economy.

There is insufficient objective medical evidence contained in the file of depression or 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 time, person and place during the hearing. 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. Under the Medical-Vocational guidelines, a younger individual (age 44), with a more 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, one-handed 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: February 4, 2010

Date Mailed: February 5, 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.

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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:

