

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: 2009-4074

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 18, 2009

Ottawa 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 February 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 September 22, 2008, claimant filed an application for Medical Assistance, State Disability Assistance and retroactive Medical Assistance benefits for the months of June to August 2008, alleging disability.
- (2) On October 15, 2008, the Medical Review Team denied claimant's application stating that claimant's impairments lacked duration.

(3) On October 20, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On October 28, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On November 20, 2008, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the claimant has a long history of alcohol abuse and alcohol-related problems. He has a history of pancreatitis with prior pancreatic resection. In [REDACTED] the claimant had perforated duodenal ulcer with surgical repair. Post operatively he has severe sepsis and vent-dependent respiratory failure. However, the claimant did improve and was discharged. A few days later he was seen in ER for low blood sugar. His exam at that time showed no focal neurological deficits. The medical evidence of record indicates that the claimant's condition is improving or is expected to improve within 12 months from the date of onset or from the date of surgery. Therefore, MA-P is denied due to lack of duration under 20 CFR 416.909. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 as the impairments would not preclude all work for 90 days.

(6) Claimant is a 49-year-old man whose birth date is [REDACTED]. Claimant is 5' 9" tall and weighs 150 pounds. Claimant is a high school graduate and attended two years of college where he studied mechanical engineering.

(7) Claimant last worked in 2006 as a retail cashier at [REDACTED]. Claimant has also worked as a roofing crew leader and in residential construction.

(8) Claimant receives unemployment compensation benefits in the amount of [REDACTED] per week which run out February 28, 2009.

(9) Claimant alleges as disabling impairments: hypertension, diabetes mellitus, neuropathy, arthritis, perforated duodenal ulcer and alcoholism.

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 2006. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that the claimant was admitted in [REDACTED] due to alcohol intoxication and suicidal thoughts while intoxicated. (Page 118) The claimant presented to [REDACTED] in [REDACTED] due to alcohol intoxication and depression (Pages 129-

131) He was noted to be an alcoholic for 40 years and has spent time in prison for DUIs and violating parole. He got out of prison in [REDACTED] (Page 132)

The claimant was admitted in [REDACTED] due to diffuse abdominal pain. His history was noted to be significant for diabetes, hypertension, coronary artery disease, pancreatitis with prior pancreatic resection, and alcohol abuse. He was hypotensive and tachycardic in the [REDACTED]. A CT scan confirmed free air and a large amount of ascites. There was diffuse dilation of the small bowel. (Page 136) The claimant underwent exploratory laparotomy with primary repair of duodenal ulcer for perforated duodenal ulcer. (Page 145) Post operatively he had severe sepsis and vent-dependent respiratory failure. He gradually improved and was exacerbated and was discharged. (Page 179)

The claimant was seen in [REDACTED] on [REDACTED] due to low blood sugar. On exam he was somewhat unkept but was alert and oriented and followed commands. Lungs were clear and heart sounds were regular. The abdominal surgical site appeared to be healing well. There were no focal or neurological deficits. His glucose did improve but the claimant did not want to be admitted. (Pages 183-184)

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. In the instant case, although claimant's impairments were severe, there is no objective clinical medical evidence in the record that claimant continues to suffer from a severely restrictive physical or mental impairment. Claimant's impairments do not meet duration. Therefore, claimant is disqualified from receiving disability at Step 2. At Step 2, the objective medical evidence on the record indicates that claimant has not established that he has a severe impairment of combination of impairments which have lasted or will last the durational

requirement of 12 months or more. From the evidence indicated on the record and in the medical forms, claimant is a substance abuser, using heavy alcohol by his own admission. Claimant testified on the record that he used to drink quite extensively but stopped drinking in [REDACTED]. The claimant does continue to smoke a pack of cigarettes per day even though his doctor has told him to quit.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial gainful activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

Claimant is not in compliance with his treatment program and is also disqualified from receiving disability because of his failure to comply.

At Step 3, claimant's impairments do rise to the level necessary to be specifically listed as disabling as a matter of law.

Claimant testified on the record that he lives in a house with three men who are trying to stay sober and they are all single with no children under 18. Claimant does receive unemployment compensation benefits in the amount of [REDACTED] per week, which would indicate that he does have the ability to work because one of the requirements for the receipt of unemployment compensation benefits is that a person be ready and able to return to work. Claimant testified that he does not have a driver's license but his friend drives him where he needs to go. Claimant stated that he does cook every other day and cooks things chicken, meatloaf and hamburger and that one of the men in the house grocery shops. Claimant testified that he only cooks as a household chore. The claimant testified that his hobby is flowers and indoor plants. Claimant stated he can walk 100 feet, stand for 15 minutes at a time and sit for a half an hour at a time. Claimant is able to shower and dress himself and bend at the waist but

cannot squat or touch his toes. Claimant can tie his shoes while sitting. Claimant testified that the heaviest weight he can carry is 25 pounds and he is right handed and that his hands and arms are fine and his legs and feet have neuropathy. Claimant testified that his level of pain on a scale from 1 to 10 without medication is an 8 and with medication is a 4.

The Administrative Law Judge finds that claimant has not established that he can no longer perform any of his prior work as a retail cashier. Therefore, claimant is 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).

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. The claimant has failed to provide the necessary objective medical evidence to establish that he has a severe impairment or combination of impairments which prevent him from performing any level of work for a period of 12 months. The claimant's testimony as to his limitations indicates that he should be able to perform light or sedentary work.

Claimant's testimony and the information contained in the file indicate that claimant has a history of alcohol and tobacco abuse. In fact, claimant does continue to smoke. 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). 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, even if he were to be considered to be disabled, because his substance abuse is material to his alleged impairment and alleged disability.

Claimant testified that he also has depression and has had it for most of his life.

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 claimant's medical reports, it is documented that he had heavy use of alcohol as well as drug addiction, which would have contributed to his physical and any alleged mental problems. Claimant was able to answer all the questions at the hearing and was responsive to all 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 the 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.

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: March 19, 2009

Date Mailed: March 20, 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

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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

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