

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: 2009-4346

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 12, 2009

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on March 12, 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 20, 2006, claimant filed an application for Medical Assistance, retroactive Medical Assistance to September 2006, and State Disability Assistance benefits alleging disability.

(2) On February 2, 2007, the Medical Review Team denied claimant's application for Medical Assistance and retroactive Medical Assistance, but approved claimant for State Disability Assistance from December 2006 through June 2007 with a review date of June 2007.

(3) A review of claimant's benefits was not conducted until 2008.

(4) On June 19, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(5) On August 5, 2008, the Medical Review Team denied claimant's continued State Disability Assistance, but did not address the Medical Assistance application.

(6) On August 8, 2008, the department caseworker sent claimant notice that his application was denied.

(7) On August 14, 2008, claimant filed a request for a hearing to contest the department's negative action.

(8) On November 20, 2008, the State Hearing Review Team again denied claimant's application stating that it had insufficient evidence and requested an independent physical consultative examination and a psychiatric evaluation.

(9) The hearing was held on March 12, 2009. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(10) Additional medical information was submitted and sent to the State Hearing Review Team on April 20, 2009.

(11) On May 1, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the claimant had a history of a left femur fracture. In [REDACTED] his gait was normal. He had some limitation of motion but no neurological abnormalities. Gait was normal. Grip was good. The claimant was quite thin but

does not meet the new weight loss listing as the listing requires a digestive disorder, continuing treatment and at least two evaluations in the last six months. Also, the complete 15 year work history requested was not completed. However, based on the information in the file, the claimant could do at least simple, unskilled, medium work. The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of simple, unskilled, medium work. In lieu of detailed work history, the claimant will be returned to other work. Therefore, based on the claimant's vocational profile of advanced age at 59, high school education and history of working as a police officer and in temporary services, MA-P is denied using Vocational Rule 203.15 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 no longer preclude work activity at the above stated level for 90 days.

(12) Claimant was, on the date of hearing, a 58-year-old man with a birth date of [REDACTED] [REDACTED] Claimant did turn 59 on [REDACTED] Claimant is 5' 9" tall and weighs 130 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills.

(13) Claimant worked as a police officer for 7-1/2 years. He worked as an [REDACTED] tech for three years. He worked in packing and shipping and receiving.

(14) Claimant alleges as disabling impairments: left hip pain, a pinched nerve, depression, back and leg problems.

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 for several years. Therefore, claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that the claimant had been approved for SDA benefits in February 2007 due to a left femur fracture. (Page 43) On exam in [REDACTED] the claimant was 5' 9" and weighed 133 pounds. His blood pressure was 120/70. He was slightly emaciated, but he said that was his normal weight. Lungs were clear. Gait was normal. He had no sensory or motor deficits in the upper or lower extremities. Grip strength was good. He had some limitation of motion of the lumber spine. Shoulder, elbows, knees, ankles, wrists, hands and fingers all had normal range of motion (ROM). He did have some limitation in the range of motion of the left hip. He did seem to exaggerate his symptoms.

A mental status exam date [REDACTED] showed the claimant's grooming and hygiene were fair. Speech was spontaneous and logical. He reported that he occasionally hears his son's voice and sometimes feels people are talking about him. His mood was depressed or irritable. His affect was appropriate to his thought content. Diagnosis included major depressive disorder with psychotic features in partial remission and alcohol dependence in remission. Claimant had a current GAF score of 59. His prognosis was fair to guarded, and it was noted that he was able to manage any awarded benefit funds. A [REDACTED] MRI of the back showed that there was degenerative disc disease between L3-L4 and L4-L5 but no herniated lumbar discs. It also revealed that he has spinal canal stenosis at L4-L5 related to the degenerative changes. His blood sugar was between 90 and 100 and he controls his diabetes mellitus with his diet. Claimant's physical examination showed that he was 5' 9" tall and weighed 133 pounds. His blood pressure was 120/70 and temperature was 98.0 degrees Fahrenheit. His pulse was 70 per minute. His respiration was 14 per minute and regular. His vision in the left was 20/100 without glasses and the right was 20/200 and both 20/70. With glasses the left was 20/50, right was 20/40 and both were 20/40. His field of vision was within normal limits.

Claimant is right hand dominant and he could button his clothes and tie his shoelaces. He had good pinch and grip strength. There were no sensory or motor deficits in his upper extremities. He had no sensory or motor deficits in the lower extremities. His gait was normal. In his mental status, he was fully alert and well-oriented x3. His hearing was normal and his speech was normal. He was slightly emaciated, but said that this was his normal weight. Cranial nerve I was not tested. II through XII were intact. There was no facial asymmetry noted. His head was within normal limits. He had no cervical adenopathy. No jugular vein engorgement. No thyroid enlargement. His skin was normal with no rashes. Claimant's nose and throat had nothing

abnormal detected. Claimant was not using his upper accessory muscles for respiration. He had no history of shortness of breath or chest pain. On auscultation he had clear vesicular breath sounds overlying both lung fields. On the first and second heart sounds were heard with no murmur. Claimant's abdomen was soft with no masses, no hepatosplenomegaly and no tenderness. Claimant cervical range of motion was flexion of 0 to 45 degrees, extension was 0 to 45 degrees, right and left lateral flexion was 0 to 30 degrees and right and left rotation was 0 to 65 degrees. In the lumbar spine flexion was 0 to 45 degrees, extension was 0 to 15 degrees and right and left bilateral flexion was 0 to 15 degrees. Straight leg raising test was 0 to 60 degrees bilaterally. Claimant's shoulders, elbows, knees, ankles, wrists, hands and fingers were all within normal limits as to range of motion. Claimant's right hip was within normal limits. Claimant's left hip had abduction 0 to 30 degrees and adduction was 0 to 15 degrees. Forward flexion was 0 to 90 degrees and backward extension was 0 degrees. Internal rotation was 0 to 20 degrees and external rotation was 0 to 30 degrees.

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 objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant has reports of pain and nerve damage in his right leg and degenerative disc disease; 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, claimant has restricted himself from tasks associated with occupational functioning based upon 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. 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 claimant suffers a severely restrictive mental or physical impairment. For these reasons, the 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. This Administrative Law Judge finds that claimant could perform the tasks of shipping and receiving even with his impairments. 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. The claimant's testimony as to his limitations indicates that he should be able to perform light or sedentary work.

Claimant testified on the record that he does have depression and a mental disorder.

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).

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. 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 which would have contributed to his physical and any alleged mental problems. It should be noted that claimant does continue to smoke a half a pack of cigarettes per day even though his doctor has told him to quit and he is not in a smoking cessation program.

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. 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.

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: June 3, 2009

Date Mailed: June 3, 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:

