

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: 2009-6085

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 5, 2009

Bay 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 5, 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 July 29, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On October 1, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.
- (3) On October 21, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On November 13, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On December 30, 2008, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the claimant has a history of Herrington rod placement in his spine due to severe scoliosis. In addition, he has limited strength in his right arm. As a result, he should avoid heavy lifting, frequent stooping and crouching, and constant grasping and handling on the right. He should be capable of performing a wide range of light work. Medical opinion was considered in light of CFR 416.927. The evidence in the file does not demonstrate any other impairment that would pose a significant limitation. 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 light work. Therefore, based on the claimant's vocational profile of a younger individual, high school education and a history of unskilled work, MA-P is denied using Vocational Rule 202.20 as a guide. Retroactive MA-P was considered in this case 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.

(6) Claimant is a 47-year-old man whose birth date is [REDACTED] Claimant is 5' 11 1/2' tall and weighs 141 pounds. Claimant recently gained 3 pounds. Claimant is a high school graduate and was in special education when he was younger. Claimant is able to read and write and does have basic math skills and also attended community college for automotive.

(7) Claimant last worked in 1996 for [REDACTED] as a manual laborer. Claimant was in prison for 12 years where he made snack bags. Claimant got out of prison [REDACTED].

(8) Claimant alleges as disabling impairments: scoliosis with a Herrington rod in place, migraines, limited use of his right arm as well as a deformity in his hand, lower back pain and a heart murmur.

### 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 1996. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a consultative examination report reported mild difficulty with orthopedic maneuvers such as heel/toe walking, etc. His gait was independent with a limp. His right arm demonstrated weakness and some atrophy. He was 71" tall and weighed 136 pounds. He was not on pain medications. An [REDACTED] radiology report indicates that there is a lower thoracic and upper lumbar levoscoliosis, the degree of which could not be determined as much as the curve has been excluded for the

provided images. A Herrington-type rod was seen in place extended caudad to the level of L2. There is narrowing of lower thoracic and upper lumbar vertebral disc spaces to the level of L3. No significant endplate spurring or eburnation can be identified. Lower lumbar disc spaces were well maintained. There were no abnormalities affecting the posterior elements or sacroiliac joint. (Page 57) At a physical examination on [REDACTED], claimant was cooperative and answered the questions and followed commands. His immediate, recent and remote memory was intact with normal concentration. The claimant's insight and judgment were both appropriate. The claimant provided a good effort during the examination. Claimant's blood pressure in the left arm was 110/60. His pulse was 80 and regular. Respiratory rate was 16. Weight was 136 pounds. Height was 71" without shoes. There was a 26" incision in the dorsal spine from the lower cervical to the mid lumbar spine area. Visual acuity in the right eye was 20/40 and the left eye was 20/40 with corrective lenses. Pupils were equal, round and reactive to light. The claimant could hear conversational speech without limitation or aid. The neck was supple without masses. Breath sounds were clear to auscultation and symmetrical. There was no accessory muscle use. There was a 2/6 murmur present without enlargement. There is a normal S1 and S2 in the heart. In the abdomen there was no organomegaly or masses. Bowel sounds were normal. In the vascular system there is no clubbing, cyanosis or edema detected. The peripheral pulses were intact. Claimant's upper arm circumference on both the right and left were 7, the forearm on the right was 6 and on the left was 7. On the right thigh was 15, on the left was 15. On the right calf was 14 and also on the left was 14. In the musculoskeletal system there was no evidence of joint laxity, crepitation or effusion. Claimant had tenderness over the radial head of the right forearm. Grip strength was diminished at the right hand. Jamar dynamometer testing showed compression of 30 pounds on the right, 50 pounds on the left.

Dexterity was unimpaired. The claimant could pick up a coin, button clothing and open a door. The claimant had no difficulty getting on or off the examination table, had mild difficulty heel and toe walking, mild difficulty squatting and mild difficulty hopping on the left, moderate difficulty on the right. Straight leg raising was negative. There was paravertebral muscle spasm. Range of motion studies was normal in all areas. Cranial nerves were intact. Motor strength was diminished to 1/5 at the right upper extremity at the wrist, elbow and shoulder. There was atrophy of the right arm. Muscle tone was normal. Sensory was intact to light touch and pinprick. Reflexes were 2+ and symmetrical. Romberg testing was negative. The claimant walked with a mild right limp without the use of an assistive device. (Pages 52-56)

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 this case, claimant does have some muscle atrophy and abnormality. Claimant has established that he has a severe impairment or combination of impairments which have kept him from working for a period of 12 months or more.

At Step 3, claimant's impairments do not rise to the level necessary to be specifically listed as disabling as a matter of law. Claimant does not meet a statutory listing in the code of federal regulations.

At Step 4, claimant last worked as a manual laborer approximately 2 ½ years and then spent 12 years in prison where he made snack bags. Claimant testified that he was injured in [REDACTED]. This Administrative Law Judge finds that claimant could probably not do jobs which require heavy lifting, frequent stooping and crouching or constant grasping or handling on the right because he does have some atrophy on the right side and right arm and hand weakness. In



addition, claimant does walk with a limp and does have some back problems. Therefore, this Administrative Law Judge will not disqualify claimant 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 tasks if demanded of him. Claimant testified on the record that he lives with his great aunt and is single with no children. Claimant testified that he does not have a driver's license and his cousin takes him where he needs to go. Claimant testified that he cooks two times a day and cooks things like eggs and boxed food. Claimant stated he can walk 10 to 30 yards at a time and can stand 15 to 20 minutes at a time and sit for a half an hour to 45 minutes at a time. Claimant is able to shower and dress himself but cannot squat, bend at the waist or tie his shoes or touch his toes. Claimant testified that the heaviest weight he can carry is 10 pounds and that he right handed and has problems with his right arm. Claimant does not retain right bilateral hand dexterity but was able to button his clothing and does not have any limitations in his fine motor skills. Claimant testified on the record that his level of pain on a scale from 1 to 10 without medication is an 8 to a 9 and with medication is a 3. Claimant testified that in a typical day he eats, goes outside to stand on the porch and then lays does. Claimant testified that he watches television 4 to 5 hours a day. Claimant testified that he takes no medication.

Claimant's activities of daily living do not appear to be very limited. He should be able to perform light work even with his impairments. 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 some

light work even with his impairments. Claimant would probably benefit from a referral to [REDACTED]. Claimant testified on the record that he does not have any mental disorders.

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 47), with a 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, 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, this Administrative Law Judge finds that 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 and State Disability Assistance benefits. The claimant should be able to perform a wide range of light work even with his impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED. However, this Administrative Law Judge finds that the Adult Medical Program is currently open during the month of March 2009. Therefore, the department is ORDERED to make an assessment as to whether or not claimant is qualified for the Adult Medical Program for the month of March 2009.

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

Date Signed: March 26, 2009

Date Mailed: March 27, 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:

