

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: 2009-6092

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 18, 2009

Marquette 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 18, 2009. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED]

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 August 14, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On October 20, 2008, the Medical Review Team denied claimant's application stating that claimant could perform his prior work.

(3) On October 23, 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 22, 2008, the State Hearing Review Team again denied claimant's application stating that claimant retains the residual physical capacity to perform light work. The claimant's past work as a sales clerk as performed in the national economy is light. Therefore, the claimant retains the capacity to perform past relevant work. MA-P is denied per 20 CFR 416.920(a). Retroactive MA-P was reviewed and denied. SDA is denied per PEM 261.

(5) Claimant is a 60-year-old man whose birth date is [REDACTED]. Claimant is 6' 1" tall and weighs 275 pounds. Claimant has a Bachelor of Arts degree in Sociology and is able to read and write and does have basic math skills.

(6) Claimant last worked December 2007 house sitting. Claimant worked as a self-employed carpenter for 25 years and as a sales clerk at a lumber yard.

(7) Claimant alleges as disabling impairments: post polio syndrome, no quadriceps on the right leg, arthritis in the knee, right ankle stiffness, back pain, pain in the right leg, restless leg syndrome, sleep apnea, night sweats, and right shoulder 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 2007. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant contracted polio in [REDACTED] at the age of 3. The result was weakness in his right leg with atrophy of the muscles. At age 7 he had corrective surgery on his right ankle and foot because it was curving underneath. He wore a brace as a child but he is not using assistive devices as an adult. During his physical examination on [REDACTED], claimant was sitting comfortably in a chair and was in no obvious distress. He was able to arise easily from the chair and perform activities requested of him. He had no difficulty bending over to remove and replace his shoes. He lifted each leg separately up to a chair while standing to tie the laces. Affect and dress were appropriate. He provided a good effort which was consistent. Mildly painful behavior was demonstrated. The claimant was cooperative in answering questions and following commands. The claimant's immediate, recent and remote memory was intact with normal concentration. The claimant's

insight and judgment were both appropriate. Claimant's blood pressure on the left arm was 148/80. His pulse was 84. His respiratory rate was 18. He weighed 275 pounds. His height was 73 inches without shoes. Claimant's BMI was 36.1. Claimant's skin was normal. Claimant's visual acuity in his right eye was 20/25 and in the left eye was 20/15 with corrective lenses. Pupils were equal, round and reactive to light. The claimant could hear conversational speech without limitation or aids. The neck was supple without apparent masses. Claimant's breath sounds were clear to auscultation and symmetrical. There was no accessory muscle use. There was a regular rate and rhythm without enlargement of claimant's heart and there was normal S1 and S2. In the abdomen there was no apparent organomegaly or masses. The abdomen was obese. Claimant had no clubbing, stenosis or edema detected in his vascular system. Claimant's extremity circumference of his thigh was 16" on the right and 20" on the left, and his calf was 15" on the right and 17" on the left. Claimant was right handed. There was no evidence of joint laxity, crepitus or effusion. Full fists with full grip bilaterally were present with excellent pinch or grasp. Dexterity was unimpaired. The claimant was able to tie a lace, button clothing and pick up a coin. Jamar Dynamometer testing showed compression of 110 pounds on the right and 75 pounds on the left. The claimant had no difficulty getting on and off the examination table, mild difficulty heel and toe walking, mild difficulty squatting and arising, putting most of his weight on his left leg, no difficulty balancing on the left, moderate difficulty balancing on the right, no difficulty hopping on the left, was unable to hop on the right and had severe difficulty with a tandem walk. He complained of pain in his back with lumbar spine flexion motion. As outlined in the DHS-49 form, range of motion testing of all joints was performed and was normal in all areas except for dorsolumbar spine flexion.

Cranial nerves 2 through 12 appeared grossly intact. Sensory appeared intact to light touch. Romberg testing was negative. The claimant walked with a mild right limp without the use of an assistive device. Straight leg raising was negative in the seated and supine positions. No radiating pain was elicited. Muscle wasting was noted on the right lower extremity as compared to the left. He demonstrated moderate motor weakness of the right lower extremity graded at 2-3/5 in all muscle groups. Claimant did not require the use of an assistive device to ambulate. Digital dexterity loss was not appreciated. X-rays of the lumbosacral spine were taken as requested. (Pages 3-7) The radiology report from [REDACTED] of the lumbar spine indicates that vertebral height and alignment are satisfactory. There is mild spondylosis between L3 and L5. Remaining lumbar disc spaces are well maintained. There was minor mid and lower lumbar facet arthrosis. There were no other abnormalities affecting the posterior elements or the sacroiliac joints. (Page 2)

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. Although claimant has had post polio syndrome since he was about 5 years old, claimant has worked a full gamut of employment with that condition. Claimant has worked as a house sitter, as a self-employed carpenter and as a sales clerk at a lumber yard with that condition. There is insufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment which has kept him from working for a period of 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. Claimant testified on the record that he does live alone in a house and he is single with no children who live with him. Claimant is supported by his friends

and relatives. Claimant does have a driver's license but he normally takes the bus everyday approximately 15 minutes to 2 hours. Claimant testified that he does cook breakfast food like bacon and eggs, that he grocery shops one time per week with no help. Claimant testified that he can walk one quarter to a half a mile which takes about 45 minutes because he gets short of breath. Claimant testified that he can stand for 15 to 20 minutes and sit for 15 to 20 minutes at a time. Claimant testified that he cannot squat but he can bend a little, shower and dress himself, tie his shoes while sitting and touch his toes. Claimant testified that the heaviest weight he can carry is a gallon of milk and that he is right handed and that his hands and arms tingle. Claimant testified that his level of pain on a scale from 1 to 10 without medication is a 7 and with medication is a 6. Claimant testified that in a typical day he wakes up, reads and meditates and goes to the bathroom and then washes up and gets dressed. Claimant cooks breakfast, catches the bus and visits his friends for about an hour and a half and then goes to the library to read papers and goes on the computer. Claimant testified that he goes to [REDACTED] meetings. Then he reads and goes to bed.

There is no medical finding that claimant's condition is deteriorating. There is a medical finding that claimant has some muscle atrophy to his leg from the polio, but there has not been any indication that claimant's condition has deteriorated since he was age 3. In short, 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.

Claimant testified on the record that he does not have any mental impairment and he does not take any medication. The evidentiary record is insufficient to find 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 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 as a sales clerk at a lumber yard. Therefore, if claimant had not already been denied at Step 2, he would again be denied at Step 4,

Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence 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 or inability to perform his past work. Claimant is disqualified from receiving disability at Step 4 and 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.

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 he should be able to perform light or sedentary work.

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. Claimant would benefit from a referral to Michigan Rehabilitation Services, as persons involved in Michigan Rehabilitation Services may be eligible for State Disability Assistance benefits based upon their involvement.

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 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: April 10, 2009

Date Mailed: April 10, 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

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