

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: 2009-6691
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 24, 2009
Jackson 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 24, 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 10, 2008, claimant filed an application for Medical Assistance and State Disability Assistance as well as retroactive Medical Assistance for the months of April through June 2008.

(2) On October 24, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On October 30, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On November 12, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On December 29, 2008, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of sedentary work per 20 CFR 416.967(a) and unskilled work per 20 CFR 416.968(a) pursuant to Medical-Vocational Rule 201.27.

(6) The hearing was held on March 24, 2009. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(7) Additional medical information was submitted and sent to the State Hearing Review Team on April 7, 2009.

(8) On April 10, 2009, the State Hearing Review Team again denied claimant's application stating that drug and alcohol abuse is material per 20 CFR 416.935 and that claimant is capable of performing other work in the form of sedentary work per 20 CFR 416.967(a) and unskilled work per 20 CFR 416.968(a) pursuant to Medical-Vocational Rule 201.27.

(9) Claimant is a 35-year-old man whose birth date is [REDACTED]. Claimant is 5' 10" tall and weighs 210 pounds. Claimant recently gained 10 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills.

(10) Claimant was last employed at [REDACTED] as a mechanic.

(11) Claimant alleges as disabling impairments: a left below the knee amputation, depression, a plate in his right leg, and an ill-fitting prosthesis.

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 on [REDACTED], claimant was diagnosed with having an amputation of his left leg below the knee joint and there were two fractures in the right kneecap. (Page 62)

The Medical Examination Report in the file indicates that claimant was normal in all areas except for his musculoskeletal area where he had mild tenderness in the right knee with grinding sounds and left leg amputation below the knee. The date of last examination was [REDACTED]. (Page 63) On [REDACTED] a prosthetics and orthotics executive director indicated that claimant takes excellent care of his residual limb and prosthesis. He has to continue to wear his shrinker sock and ace wrap to stabilize his limb volume and prevent edema. (Page 29) Claimant lost his leg as a result of a motor vehicle accident. A prescription from [REDACTED] [REDACTED] dated [REDACTED], indicates that claimant cannot return to work because he needs right knee surgery and a permanent left leg prosthetic. A medical report of [REDACTED] indicates that an exam shows that claimant's right knee to have an obvious defect where the patella should be from his displaced patellar fracture, which is old. There was no ligament laxity. Extremity was neurovascularly intact. There was no significant effusion. There was no warmth or erythema. X-ray of the right knee showed no acute process read by the doctor. There was a displaced old patellar fracture as well as an old right tibia fracture with plates and screws. Medical reports of [REDACTED] indicate that claimant was brought to [REDACTED] by [REDACTED] after a high speed motor vehicle accident. Apparently claimant was driving a stolen vehicle from [REDACTED] being pursued by the police. The pursuit obtained speeds of over 100 miles an hour. The claimant's car was slowed by a spike device used by the police on the expressway and the claimant crashed into a bridge abutment and was ejected from the vehicle. He did not have loss of consciousness and was alert and oriented upon presentation to

the [REDACTED]. Claimant sustained a complete avulsion of the left foot as well as a small left kidney laceration as well as a transverse process fracture of the lumbar spine at L1-L3. Claimant had an initial evaluation in the [REDACTED] which included a urine drug screen which was positive for opiates and amphetamines. (Page 127) Claimant was taken expeditiously to surgery for a completion of a formal BK amputation. A DHS-49 in the file indicates that as of [REDACTED], claimant's condition was improving and that he could occasionally lift 50 pounds or more when his balance improved, that he could stand or walk less than 20 minutes in an eight hour day. Claimant could use both upper extremities for simple grasping, reaching, pushing and pulling and fine manipulating and could only use the right leg for operating foot and leg controls because he had a left below the knee amputation. (Page 69) A Medical Examination Report dated [REDACTED] indicates that claimant was normal in all areas except for a deformity of the right knee with joint and crepitus and except for the left leg prosthetic. Claimant was 5' 10" tall and weighed 225 pounds. His blood pressure was 116/70 and he had 20/20 vision in both eyes best corrected. Claimant was stable and had a temporary disability which is expected to last about 16 months because he needed right knee surgery and he could stand or walk less than two hours in an eight hour workday. Claimant could never lift any weight and he did need a prosthetic left leg but could use upper extremities for simple grasping, reaching, pushing and pulling and fine manipulating and he had no mental limitations. A physiatrist examination dated [REDACTED] at pages 9 and 10 of the medical reports indicates that claimant was 69" tall with a weight of 221 pounds. His pulse was 96 a minute and his respiratory rate was 16 per minute, blood pressure 142/104. Vision without glasses was 20/25 bilaterally. The claimant does not wear glasses. Claimant present by himself. His speech was clear. He used a cane in his right hand. He had the prosthesis with a sock and there was no

cosmetic leg. He ambulated with the prosthetic somewhat broad-based as it related to his left leg. It is apparent that he could not squat, tandem walk, or stand on heels and toes. He was able to dress and undress himself independently. He took the prosthesis off and put it back on independently. When claimant stands, on observation of dorsolumbar spine there is a slight curvature of the spine to the left. Forward flexion of the trunk is 80 degrees. Other range of motion is recorded. There is no spasm. There was no abnormality deformity noted of spinous processes, particularly in the lumbar area. There is full range of motion of the cervical spine. There is full range of motion of the shoulders and elbows. Right forearm circumference was 12 ½ inches, left was 12. There is full range of motion in the wrists and digits of both hands. Right grip strength is 95 pounds; left 85 pounds with hand dynamometer used. There is a full range of motion of the hips. There is a full range of motion of the right ankle. There is a left below the knee amputation with a stump measuring eight inches in length. The distal portion is somewhat bulbous. There are red areas as it relates to the stump compatible with local irritated areas and areas where the skin has broken down in the past. Right calf circumference is 16 inches. Right knee circumference is 17 inches; left is 16 ¼ inches. Right thigh circumference is 20 inches; left is 21 inches. There is full extension of the right knee with flexion limited to 50 percent. There is a bony abnormality as it relates to the right patella. There is difficulty of concern with the pathology as it relates to the patella. It appears to be dislocated superiorly but it also appears to be proportionately more distally over the knee. Straight leg raising was negative. Deep tendon reflexes were 2+ in the upper extremities, right lower extremity and left patella reflex. Muscle strength is normal in upper extremities and lower right extremity. Muscle strength above the left quadriceps and hip girdle muscles are in fair plus grades. There were no fasciculations. Peripheral pulses are equal to the remaining units. There is no ataxia, tremor,

spasticity or increased tone. Coordination is intact as it relates to finger to finger, finger to nose and rapid eye movements. No incoordination is noted referable to the right lower extremity. The doctor determined that with the left below the knee amputation, claimant needs prosthesis with a cane, crutches or a wheelchair for ambulation. He is going to need periodic evaluation and treatment referable to the left lower extremity. He has demonstrated a tendency toward infections in the stump. Claimant has pathology referable to the right knee patella which appears to be the main pathology. This is of concern as he has to depend on his right leg for making ground contact for stabilization of his body when ambulating. No impairment is noted in the upper extremities.

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. This Administrative Law Judge finds that the objective medical evidence on the record indicates that claimant has 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 does not have a suitable prosthetic for his left leg and he does have some problems with his right leg which makes ambulation almost impossible. Claimant must use a cane, a wheelchair or crutches to ambulate and he must use his right leg as stabilization. Claimant has right knee problems. Therefore, this Administrative Law Judge finds that claimant is not disqualified from receiving disability at Step 2.

At Step 3, claimant's impairments do not rise to the level necessary to be specifically listed as disabling as a matter of law.

At Step 4, currently, claimant cannot perform his prior work as a mechanic, as he cannot ambulate or stand for long periods of time based upon the fact that he does have an amputated

left leg and that he does have problems with his right knee. Therefore, claimant is not 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).

Claimant has submitted sufficient objective medical evidence that he cannot currently perform even sedentary work. Sedentary work does require occasional standing and walking to carry out certain duties. Claimant would also have to occasionally lift and carry articles like

docket files, ledgers, and small tools and lift less than 10 pounds at a time. However, claimant must use crutches, a wheelchair or a cane to walk with which means that he does not have hands available to perform sedentary tasks at all times. Claimant's activities of daily living are very limited as he is not able to shower and dress himself because he cannot stand for long. He can't carry a gallon of milk because of his balance and inability to ambulate without assistance.

Claimant also testified that his left leg has shrunk and that he does need an appropriate prosthetic which he does not have. Claimant testified that his right leg is also weak. He sits at home most of the time and watches television and that he is taken to [REDACTED] meetings is someone will take him. This Administrative Law Judge finds that claimant has established that he does have a severe impairment or combination of impairments which have lasted or will last the durational requirement and keep him from performing even sedentary work.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has not 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. This Administrative Law Judge finds that claimant is disabled for purposes of Medical Assistance and State Disability Assistance benefits as of the July 10, 2008 application date and is also disabled for purposes of retroactive Medical Assistance benefits from April, May and June 2008 based upon the fact that he cannot currently perform even sedentary work because he does have an amputated left leg and also severe problems with his right knee. Claimant has established his case by a preponderance of the evidence.

Accordingly, the department's decision is REVERSED. The department is ORDERED to reinstate claimant's Medical Assistance and State Disability Assistance benefits application as well as the retroactive Medical Assistance application. Claimant does meet the definition of medically disabled under the Medical Assistance program and the State Disability Assistance program. The department is ORDERED, if it has not already done so, to determine if all other non-medical eligibility criteria are met. The department shall inform the claimant of the determination in writing.

The department is ORDERED to assist claimant in gathering medical information for a medical review which should be conducted in May 2010. At that time, claimant should provide all updated medical information as it pertains to his physical condition. There should be a complete physical conducted with range of motion testing as well as updated information on claimant's amputation, prosthetic and right knee problems.

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

Date Signed: April 27, 2009

Date Mailed: April 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.

2009-6691/LYL

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:

