

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: 2009-6800

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

January 29, 2009

Ingham 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, an in-person hearing was held on January 29, 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), retroactive Medical Assistance (retro 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, State Disability Assistance and retroactive Medical Assistance benefits for the months of April, May and June 2008 alleging disability.

(2) On August 11, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On August 18, 2008, the department caseworker sent claimant notice that his application was denied.

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

(5) On January 5, 2009, the State Hearing Review Team again denied claimant's application stating that claimant's impairments are non-severe pursuant to 20 CFR 416.920(c).

(6) The hearing was held on January 29, 2009. The claimant personally appeared and waived the time limits 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 21, 2009, the State Hearing Review Team again denied claimant's application stating that claimant's impairments are non-severe pursuant to 20 CFR 416.920(c).

(9) Claimant is a 46-year-old man whose birth date is [REDACTED]. Claimant is 5' 7" tall and weighs 304 pounds. Claimant recently gained 100 pounds and lost 4 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills.

(10) Claimant last worked in 2006 as an office cleaner. Claimant also worked at [REDACTED] in banquet set-up, a cook in a restaurant and as a crossing guard and a hall monitor.

(11) Claimant alleges as disabling impairments: neuropathy, retinopathy, shortness breath, asthma, diabetes mellitus, kidney problems and hypertension as well as gastroparesis and narcolepsy and sleep apnea.

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 claimant had an eye examination report and his vision measurements without corrected vision was 20/40 in the right and 20/30 in the left with best correction was 20/20 in both eyes. (Page 8)

Medical report of [REDACTED] indicates that claimant's general health was that he was in no acute distress. He was afebrile. His vital signs were stable. His heart was regular rate and rhythm without murmur. His lungs were clear to auscultation. Abdomen was soft and non-tender. Bowel sounds were active. No mass or hepatosplenomegaly. Extremities had no edema. Claimant did have type 2 diabetes mellitus. (Progress note December 11, 2008)

On [REDACTED], claimant presented for follow-up for his diabetes mellitus and hypertension. He had laboratory studies done which revealed triglycerides of 629, HDL of 33, cholesterol-HDL ratio of 5.5, glycohemoglobin of 8.7 and INR of 1.6. He was otherwise feeling well. He was worried that he was gaining weight but stated that he wasn't eating much. He was afebrile. Vital signs were stable. Heart was regular rate and rhythm without murmur. Lungs were clear to auscultation. Extremities were with 1+ edema.

On [REDACTED] indicates that claimant has obstructive sleep apnea, narcolepsy with cataplectic episodes and alveolar hyperventilation. He was started on a medication regimen.

A [REDACTED] report from [REDACTED] indicates that claimant has the beginning of diabetic retinopathy in both eyes and the doctor stressed the importance of tight blood sugar control. Claimant's vision was okay. He had mild non-proliferative diabetic retinopathy, myopia and a stigmatism but he had vision that was correctable to 20/30 in the right eye and 20/20 in the left eye.

Gastroenterology report of [REDACTED] indicates that on physical examination claimant was a pleasant 45-year-old male presenting in no acute distress. The claimant was alert and oriented x3. Height was 5' 7", weight was 283 pounds. Blood pressure 120/78, pulse 66, respirations 18, temperature 98.4, skin was dry and intact. No rashes, lesions or jaundice. HEENT: head is normocephalic and atraumatic. Pupils were equal, round and reactive to light and accommodation. Extraocular movements were intact. Sclerae were anicteric. Conjunctivae were pink. Oral mucosa was pink and moist, no lesions. Neck was supple and non-tender. No lymphadenopathy or thyromegaly. Lungs were clear to auscultation bilaterally. Heart was regular rate and rhythm. Abdomen with positive bowel sounds, soft, obese and non-distended. There was mild diffuse tenderness without guarding, rebound or rigidity. There were no palpable masses or organomegaly. Rectal exam was deferred. Extremities revealed no peripheral edema. Claimant was diagnosed with gastroesophageal reflux disease and diabetic gastroparesis with recent exacerbation.

An [REDACTED] neurological exam indicates that claimant's gait including tandem gait was normal. Normal toe and heel walking. Romberg sign was negative. Sensory examination revealed dulling of soft touch and pinprick sensation in the outer side of the thighs, in the distribution of lateral femoral cutaneous nerve. Otherwise, normal soft touch, pinprick, vibration, and position sensation in the extremities. Examination of the motor system and the extremities revealed no abnormal movement or wasting. Normal tone. No weakness. Deep tendon reflexes were sluggish in the upper limbs in symmetrical fashion. Knee jerks absent. Ankle jerks 1-2+ and symmetrical. Cerebellar function was normal. Neurological examination revealed normal orientation and memory. Normal speech. Normal attention span and fund of knowledge. Examination of the cranial nerves revealed full visual fields. Visual acuity was roughly 20/20

from each eye with glasses. Normal fundi with normal optic discs. No evidence of diabetic retinopathy on undilated fundus examination. Normal pupils. Ocular movements full. No nystagmus. No facial weakness. Normal facial sensations. Normal hearing. Normal movements of tongue and palate. Normal sternocleidomastoid and trapezius muscles. Examination of the head, neck and spine are unremarkable. Normal straight leg raising test bilaterally. Examination of skin revealed a couple of café au lait spots over the body, one over the right eye, and one over the left abdominal wall.

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 insufficient objective clinical medical/psychiatric evidence contained in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant does have diabetes and neuropathy and he is obese. However, the physical examinations were basically within normal limits and the objective medical information in the file indicates that there are no assistive devices medically required or needed for ambulation. The clinical impression is that claimant is stable. 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 his report 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 or mental impairment. Claimant was able to answer all the questions at the hearing and testified that he did not have any 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 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 past relevant work. Claimant last worked as a crossing guard and as a cook in a restaurant and as banquet setup as well as an office cleaner. This Administrative Law Judge finds that there is no medical evidence in this file upon which this Administrative Law Judge could base a finding that claimant is unable to perform work which he has engaged in in the past. Therefore, if claimant had not already been denied at Step 2, he would be denied again 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. Claimant testified on the record that he can walk a block, stand for 15 to 20 minutes at a time and sit for 20 to 30 minutes at a time. Claimant can sometimes squat but stated that he can't bend at the waist because of his stomach. Claimant is able to shower and dress himself, and tie his shoes but not touch his toes. Claimant testified that the heaviest weight he can carry is 10 pounds and that he is right handed and that his hands and arms are fine. Claimant testified that he does have neuropathy in his legs. Claimant testified that his level of pain on a scale from 1 to 10 with medication is a 10 and with medication is a 6.

Claimant testified that in a typical day he wakes and washes up and brushes his teeth and then turns on the TV and watches it all day long on and off. Claimant testified that he cooks breakfast, cooks lunch and sits on the couch all day. Claimant testified that he was last in the hospital [REDACTED] for gastroparesis and a blood clot.

Claimant has submitted insufficient objective medical evidence that he lacks the residual functional capacity to perform 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 as claimant did testify that he does have a driver's license and he drives three or four times to the store, to friends, and that he microwaves his food everyday and prepares things like TV dinners and he grocery shops one time per month where he rides the cart. Claimant also testified that he does do dishes and laundry sometimes and he vacuums rarely. The claimant's testimony as to his limitations indicates he should be able to perform light or sedentary work. 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 also 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 a younger individual (age 46), 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, 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: May 7, 2009

Date Mailed: May 11, 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:

