

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: 2009-8107

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 16, 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 April 16, 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 August 26, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On November 7, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On November 13, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On November 24, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On January 22, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of light work per 20 CFR 416.967(b) pursuant to Medical-Vocational Rule 202.21.

(6) The hearing was held on April 16, 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 27, 2009.

(8) On May 6, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of light work per 20 CFR 416.967(b) pursuant to Medical-Vocational Rule 202.21.

(9) Claimant is a 34-year-old man whose birth date is [REDACTED]. Claimant is 6' 2" tall and weighs 205 pounds. Claimant recently gained 15 pounds. Claimant is a high school graduate and has two years of college in fire science and technology. Claimant is able to read and write and does have basic math skills.

(10) Claimant last worked June 2007 selling auto parts. Claimant has also worked as an [REDACTED] store manager doing mosquito control for [REDACTED] and at a dog kennel as well as working for [REDACTED].

(11) Claimant alleges as disabling impairments: low back pain (three surgeries), a torn meniscus and painful knees.

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 a CT lumbar scan with contrast showed that the conus medullaris is located at T12-L1 level and is normal in size. The alignment of the lumbar spine is satisfactory. At L4-L5 there is a large extrusion of the disc centrally and right paracentrally. This results in severe narrowing of right lateral recess and compression of right L5 nerve root. The herniated disc material has mass effect along the ventral aspect of the thecal sac, which does not result in significant spinal canal stenosis. No significant neural foraminal stenosis at this level. At L5-S1 there is a broad-based bulge of the disc associated with more focal protrusion at left paracentral aspect, resulting in left lateral recess stenosis with mild impingement on left S1 nerve root. The herniated disc material has mass effect along the ventral aspect of the thecal sac without significant spinal canal stenosis. No significant neural foraminal stenosis. No significant disc herniation at other levels. Incidental note is made of a small amount of contrast within the epidural space. (New Material, Page 11 of 31) An electromyography was performed on [REDACTED] which indicated that there is no electrodiagnostic evidence of a left lower extremity radiculopathy, plexopathy or mononeuropathy. There is evidence of a mild, chronic, right L5 radiculopathy without ongoing denervation. (New Material, Page 12 of 31) A [REDACTED] report from [REDACTED] [REDACTED] indicates that the objective was a 32-year-old gentleman in no acute distress. Lower lumbar spine demonstrated no tenderness to palpation. There were no myofascial spasms noted. Straight leg raise was negative. (New Material, Page 3 of 31)

A [REDACTED] physical examination indicates that on [REDACTED] the claimant was dressed in a t-shirt, jeans and tennis shoes. He 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 are both appropriate. The claimant provided a good effort during the examination. His blood pressure on his left arm was 120/90, his pulse was 88 and regular, respiratory rate was 15, weight was 202 pounds and his height was 74" without shoes. On the skin there is an eight-inch incision over the dorsolumbar spine. Visual right eye acuity was equal to 20/15 and the left eye acuity was 20/15 without corrective lenses. Pupils were equal, round and reactive to light. The claimant can hear conversational speech without limitation or aids. The neck is supple without masses. In the chest breath sounds are clear to auscultation and symmetrical. There is no accessory muscle use. In the heart there was a regular rate and rhythm without enlargement. There was a normal S1 and S2. In the abdomen there was no organomegaly or masses. Bowel sounds are normal. In the vascular there is no clubbing, cyanosis or edema detected. Peripheral pulses are intact. In the musculoskeletal area there was no evidence of joint laxity, crepitation or effusion. Grip strength remains intact. Dexterity is unimpaired. The claimant could pick up a coin, button clothing and open a door. The claimant had no difficulty getting on and off the examination table and mild difficulty heel and toe walking, mild difficulty squatting and mild difficulty hopping. There is a 20 degree thoracic kyphosis. Dorsolumbar range normal is 0-90 degrees and claimant's was 70 degrees. His dorsolumbar spine extension 0-25 degrees are normal and claimant's was 20 degrees. Right lateral flexion 0-25 degrees are normal, claimant's was 25 degrees and left lateral flexion was 9-25 degrees and claimant's was 25 degrees. (Page 92 of the Medical Reports) Claimant had normal hip abduction and adduction and forward and backward flexion and rotation and had normal knee flexion extension. Claimant had normal dorsiflexion and plantar flexion. Dr. Lazzara stated that claimant has undergone three operative interventions over the last three years and is at risk for developing progressive posttraumatic

arthritis. Imaging studies of his lumbar spine may be helpful given that he did have a motor vehicle accident.

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 in the record that claimant suffers a severely restrictive physical or mental impairment. 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. The clinical impression that claimant is deteriorating; however, the only finding made is claimant has some tenderness in his musculature. 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, the 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 impairment.

There is insufficient objective medical evidence in the record indicating claimant suffers mental limitations. There is no mental residual functional capacity assessment in the record. The evidentiary record is insufficient to find that 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 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. There is insufficient objective medical evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work that he has engaged in in the past. 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).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

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 that he does have a driver's license and that he does drive two times per week and drives 20 miles as his farthest drive and usually does grocery shopping. Claimant does cook daily and makes things like soup and hamburger. He does grocery shop two times per month and he needs help pushing the cart. His mother usually helps him. Claimant testified that he does clean his home with mom's help. He cleans the counter, tables and does laundry but it is hard for him to bend. Claimant testified that he does cut the grass with a riding lawnmower and he uses the computer for about a half an hour to an hour everyday as his hobby is computers. Claimant can walk one to one a half miles, stand

a half an hour to 45 minutes at a time and sit for 20 minutes at a time. Claimant is able to shower and dress himself but cannot touch his toes. Claimant can bend to touch his kneecaps but cannot squat and testified that he can tie his shoes if he can sit down. The heaviest weight that claimant can carry 35 pounds or 10 pounds repetitively. Claimant is left handed and his hands and arms are fine. Claimant testified that his left knee has a meniscus tear and joint pain. Claimant stated that his level of pain on a scale from 1 to 10 without medication is 7 and with medication is a 5-1/2 to a 6. Claimant testified that he does smoke ¾ of a pack of cigarettes per day and his doctor has told him to quit but he is not in a smoking cessation program.

Claimant does continue to smoke despite the fact that his doctor has told him to quit. He is not in compliance with his treatment 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 testified that in a typical day he wakes up and feeds his dogs and then he lies down which gives him some relief. Claimant testified on the record that he does not have any mental impairment.

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 a younger individual (age 34), with a high school education and an unskilled work history who is limited to light work is not considered disabled pursuant to Medical-Vocational Rule 202.21.

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 5, 2009

Date Mailed: June 8, 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:

