

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: 2009-12352
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 25, 2009
Washtenaw 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 March 25, 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 September 18, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On October 23, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On October 27, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On November 18, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On February 20, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing work and can perform light work per 20 CFR 416.967(b) pursuant to Medical Vocational Rule 202.17.

(6) The hearing was held on March 25, 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 June 11, 2009.

(8) On June 16, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work and can perform light work per 20 CFR 416.967(b) pursuant to Medical Vocational Rule 202.17 and commented that 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, unskilled work. Therefore, based on the claimant's vocational profile of a younger individual, with a limited education, MA-P is denied using Vocational Rule 202.17 as a guide. Retroactive MA-P was considered in this case and 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.

(9) Claimant is a 40-year-old man whose birth date is [REDACTED] Claimant is 5' 11" tall and weighs 198 pounds. Claimant recently lost 50-60 pounds. Claimant attended the 10th grade and has no GED. The claimant is able to read and write and is able to add, subtract, multiply, and count money.

(10) Claimant last worked in 2007 in a tofu packing plant. Claimant has also working doing construction work and lived off of a female from 2003-2007. Claimant also drove a hi-lo and did heavy lifting and made sandwiches at an airport market and worked at [REDACTED] as a unit trainer.

(11) Claimant alleges as disabling impairments: depression, back problems, arthritis, degenerative spondylosis, and bulging discs.

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.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

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).

The objective medical evidence on the record indicates that a [REDACTED] psychological report indicates that claimant is a 39-year-old man with a history and presentation consistent with marijuana abuse, alcohol abuse in remission, and major depressive disorder. Claimant had no evidence of poor grooming and hygiene. He had very mild blunted affect. He had moderate depressive mood where he occasionally felt very depressed or often felt mildly depressed and he had very mild guilt feelings occasionally feeling somewhat guilty. His appearance was average. He had good eye contact. His speech, rate, rhythm, and volume were normal. He was cooperative. He had normal movement. His mood was fair. His affect was euthymic and appropriate to the mood. His thought process was logical. He denied any hallucinations. He denied any delusions. The report indicated that claimant continued to smoke marijuana every morning and denied any side effects.

A Medical Examination Report in the file indicates the claimant was normal in most examination areas and had degenerative spinal column disease and degenerative disc disease and he had severe depression and cannabis dependence. He had multilevel bulging of discs combined with superimposed facet arthritis and congenital narrowing of the spinal canal. He was 5' 11" tall and weighed 236 pounds. His blood pressure was 120/70 and he was right-hand dominant. He could occasionally lift 25 pounds or less and frequently lift 10 pounds or less and never lift 50 pounds or more. He could stand or walk less than two hours in an eight hour day and could sit less than six hours in an eight hour day. The claimant could use his upper extremities for simple grasping, reaching, pushing/pulling, and fine manipulating and he could operate foot and leg

controls with both feet and legs. Claimant had no mental limitations. Claimant could meet his own needs in his home. (Pages 22-23)

A Medical Needs form from [REDACTED] indicates that claimant does not have a medical need for any assistance of personal care activities. No one accompanied him to his medical appointments and he didn't need special transportation and that he was ambulatory. Claimant could work except that he couldn't do excessive bending or squatting or regular lifting. (Page 19)

An [REDACTED] medical report indicates that claimant was alert and oriented x3. He was pleasant and cooperative and in no acute distress. He was 5'11" tall and weighed 239 pounds. One year ago he reported a weight of 260 pounds. His blood pressure was 140/86 with a pulse rate of 64 and his respirations were 14. Visual assessment of his posture revealed a mild forward head posture relative to his shoulders and straightening of the upper thoracic kyphosis. The lumbar lordosis was normal. There were no scoliotic deformities. There were no abnormal findings of tone in the paraspinals in the thoracic or lumbar areas. There was no overt tenderness in the lumbar paraspinals but he had some sciatic pain and pain in his buttocks when he bent forward at the waist. He had increased back pain and buttock pain when he did straight leg raising of the left leg. Straight leg raising on the right did not result in pain. He was able to rise onto his tiptoes. He had a negative Trendelenburg sign. His muscle stretch reflexes in the lower extremities were symmetric at the knees and ankles. There was no focal weakness with manual muscle testing and no sensory loss with pin testing in any of the dermatomes bilaterally in the legs. He had normal lumbar mobility for lumbar flexion and extension albeit with pain with flexion beyond 45 degrees. There was no muscle atrophy detected in his legs and his pulses were

symmetrically normal in his feet. There was no pedal edema or swelling in his ankles or feet.

Claimant was given some exercises to do. (Page 15)

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 evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant has reports of pain in his back and legs; however, there are no corresponding clinical findings that support the reports of symptoms or limitations made by the claimant. Claimant does have degenerative spondylosis; however, there are no medical findings 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 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 that he does live alone and he rents a room and is single with no children under 18. Claimant does catch the bus two times per week from [REDACTED] and he does microwave TV dinners and make sandwiches. Claimant grocery shops one to two times per month with no help and he does clean his home by vacuuming, doing laundry, and dishes. Claimant testified that he fishes when it's warm and that he can walk 3-4 blocks, stand for 20-30 minutes at a time, and sit for 15-20 minutes at a time. Claimant is able to shower and dress himself and tie his shoes as well as touch his toes and bend at the waist. Claimant testified that he can squat but not without pain and that the heaviest weight he can carry is 30 pounds and

repetitively he can lift 15-20 pounds. Claimant testified that he is right-handed and there is nothing wrong with his hands and arms. Claimant testified that his level of pain on a scale from 1 to 10 without medication is a 4 and with medication is also a 4. Claimant testified that he does smoke marijuana two to three times per week. Claimant testified that in a typical day he gets up and eats and watches television all day.

There is insufficient evidence in the record indicating claimant suffers mental limitations resulting from his reportedly depressed state. There is insufficient objective medical/psychiatric information contained in the file which would establish that claimant has mental limitations resulting from his depressed state. Claimant did testify that sometimes he feels homicidal and doesn't like people. Claimant testified that he is not homicidal at the hearing. There is insufficient objective medical/psychiatric evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. In addition, based upon claimant's medical reports, it is documented that claimant has had heavy use of alcohol as well as current marijuana abuse which would contribute to his physical and any alleged mental problems. 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 his past relevant work. Claimant's past relevant work as a unit trainer at [REDACTED] and making sandwiches at the airport

market or packing tofu would be consistent with his limitations as claimant did testify he can lift 15-20 pounds repetitively and his Medical Examination Report indicates that claimant could perform light work even with his impairments. There is insufficient objective medical evidence 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 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.

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 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 light or sedentary work.

Claimant's testimony and the information contained in the file indicate that claimant has a history of alcohol abuse as well as current marijuana use. Applicable hearing is the Drug Abuse and Alcohol (DA&A) Legislation, Public Law 104-121, Section 105. The federal regulations at

20 CFR 404.1535 speaks to the determination of whether drug addiction and alcoholism (DA&A) is material to a person's disability and when benefits will not be approved. The regulations require the disability analysis to be completed prior to a determination of whether a person's drug and alcohol is material. It is only when a person meets the disability criteria as set forth in the regulations that the issue of materiality becomes relevant. In such cases, the regulations require a sixth step to determine the materiality of DA&A to a person's disability. When the record contains evidence of DA&A, a determination must be made whether or not a person would continue to be disabled if the individual stopped using drugs or alcohol. The trier-of-fact must determine what if any of the physical or mental limitations would remain if the person were to stop the use of drugs or alcohol or whether any of these remaining limitations would be disabling. After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that claimant does not meet the statutory disability definition under the authority of the DA&A Legislation because his substance abuse is material to his alleged impairment and alleged disability.

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 40), with a less than high school education and an unskilled work history who is limited to light work is not considered disabled pursuant to Medical Vocational Rule 202.17.

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: July 31, 2009

Date Mailed: July 31, 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:

