

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: 2009-16391

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 19, 2009

Macomb 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 May 19, 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 7, 2008, claimant filed an application for Medical Assistance, State Disability Assistance and retroactive Medical Assistance benefits alleging disability.

(2) On December 12, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On December 15, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On January 23, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On March 27, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of medium work per 20 CFR 416.967(c) pursuant to Medical-Vocational Rule 203.18 and commented that there very minimal abnormal findings in the [REDACTED] exam. The claimant's treating physician has given less than sedentary work restrictions based on the claimant's physical impairments. However, this Medical Source Opinion (MSO) is inconsistent with the great weight of the objective medical evidence and per 20 CFR 416.927c(2)(3)(4) and 20 CFR 416.927d(3)(4)(5), will not be given controlling weight. The collective objective medical evidence shows that the claimant is capable of performing medium work.

(6) Claimant is a 51-year-old man whose birth date is [REDACTED]. Claimant is 5' 11" tall and weighs 175 pounds. Claimant attended the 9<sup>th</sup> grade and has no GED. Claimant was in special education for math and is able to read and write and can add and subtract but not do multiplication.

(7) Claimant testified that he has worked in the past as a machine press operator, as a maintenance person in lawn care for an apartment complex, a semi-truck driver and a factory worker.

(8) Claimant alleges as disabling impairments: renal stones, liver damage, hepatitis C, seizures, a hernia, hypertension, L5-S1 damage, cardio obstructive pulmonary disease (COPD), Alzheimer's and depression.

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 for approximately ten years. Claimant is not disqualified from receiving disability at Step 1.

A DHS-49 form dated [REDACTED] indicates that claimant was normal in all examination areas except that he showed signs of fatigue and multiple myalgias, and he had a negative Tinel, but good grip and a positive Phelan. Claimant's blood pressure was 138/94 and he was 5' 11" tall and right-hand dominant. He could occasionally lift less than twenty pounds

and he could stand or walk less than two hours in an eight workday and sit less than six hours in an eight workday. Claimant's clinical impression was that claimant was deteriorating. He could use his upper extremities for repetitive actions such as simple grasping, reaching and fine manipulating, but not pushing and pulling and could operate foot and leg controls with both feet and legs. Claimant had no mental limitations.

On [REDACTED], a DHS-49 indicates that claimant was normal in all examination areas except that he had a depressed demeanor and had pain with forward flexion in the back and shoulders and abduction to 95 degrees. Claimant was 5' 11" and weighted 166 pounds. His blood pressure was 145/84. Claimant's condition was stable and he could frequently lift less than ten pounds and occasionally lift ten pounds or less and he could stand or walk less than two hours in an eight hour day and sit less than six hours in an eight hour day. Claimant could use both of his upper extremities for simple grasping, reaching and fine manipulating, but not for pushing and pulling and he could operate foot and leg controls with both feet and legs. Claimant had some memory and sustained concentration problems and the doctor indicated that claimant needed to see a neurologist.

A [REDACTED] report indicates that claimant had a fatty liver infiltration, bilateral nephrolithiasis, borderline abdominal lymphadenopathy was stable since the prior study and he had a subtle lesion in the right lobe of the liver. As there was a history of hepatitis, a follow-up study in six months and/or MRI was recommended for further evaluation.

A medical report dated [REDACTED] indicates that claimant had degenerative disc disease of the lower lumbar spine, most severely at L5-S1. A [REDACTED] bone scan indicates that claimant had a dental abnormality in the region of the mandible on the left. He had degenerative changes in the sternoclavicular joints, particularly on the left. He had suspected

fractures of the left second rib laterally and the right fifth rib anteriorly. He had probable degenerative changes in the thoracic spine at T4-T5 and lumbar spine at L5. (Page 11)

A [REDACTED] report indicates that claimant was sent to a [REDACTED] for internist evaluation and it was determined that claimant was 50 years old and was 69-1/2" tall without shoes. He weighed 173 pounds without shoes and his blood pressure was 130/96, 130/94, 130/94 with a regular cuff size. His pulse was 89 beats per minute, regular, and respiratory was 25 beats per minute. Temperature was 98 degrees Fahrenheit and his vision with glasses in the right eye was 20/20 and the left eye was 20/15. HEENT: Sclera/PERLA normal. Vision was fair without glasses. Fundi were normal. Ears were clear. Hearing was normal. He had loss of several teeth. His neck was supple, his thyroid wasn't enlarged, JVP was normal, carotid arterial pulsations were normal. No carotid bruit. No lymphadenopathy. Cardiovascular: PMI was palpable and heart sounds were normal. No palpable thrill. No murmur or gallop rhythm. Chest: the claimant was comfortable on sitting in supine position. Accessory muscles of respiration were not working. There was no central cyanosis. Trachea was central. No tenderness over the anterior chest wall. Percussion note was resonant. Cardiac and liver dullness were not obliterated. Breath sound was vesicular with no adventitious sounds. Vocal fremitus and resonance were normal. Claimant's abdomen was soft with no organomegaly. No tenderness. Bowel sounds were normal. Rectal examination deferred. On claimant's skin there were a few scars over the abdomen and right thigh. No rash to pigmentation. He had tattoo marks on both upper extremities and the back. He also had a beard. In his extremities there was no clubbing, cyanosis, edema or varicose veins. Peripheral pulsations were well palpable within the lower extremities. Both feet were warm. No femoral bruit. Claimant could stand without support. No loss of cervical or lumbar lordosis. No tenderness over the spine. All movements of the lumbar

spine were painful and some were restricted; flexion to 85 degrees, extension to 20 degrees, lateral bending to 25 degrees and rotation to 25 degrees. Straight leg raise was 90 degrees on both sides with complaint of pain over the lower back. In claimant bones and joints all movements of the left shoulder were painful but no limitation of movement. Flexion of the PIP joint of the right little finger was slightly restricted and is painful. There was crepitus in both knees. No pain, swelling, limitation of movements or crepitus in any other joint. No wasting of muscles around the joints. Grip strength was 5/5 in both hands tested manually. Claimant could ambulate without any support. There were no neurological deficits noted in the examination. The last seizure claimant had was in [REDACTED]

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 no objective clinical medical 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 DHS-49s in the file indicate that claimant's examination areas are basically normal with a few exceptions. There are no laboratory or x-ray findings listed on the DHS-49 which support claimant's limitations. The clinical impression is that claimant is stable. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury consistent with a deteriorating condition. In short, claimant has restricted himself from tasks associated with occupational functioning based upon his reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that claimant has met the evidentiary burden of proof can

be made. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers mental limitations resulting from his reportedly depressed state. 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 do his prior work as a maintenance or lawn person. Claimant could also probably drive a semi truck even with his impairments. Thus, if claimant had not already been denied at Step 2, he would again be denied at Step 4 as there is no medical evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform which he has engaged in, in the past.

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/psychiatric 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 forbid him from performing any level of work for a period of 12 months. Under the Medical-Vocational guidelines, pursuant to Vocational Rule 203.18, a person with claimant's age, education and 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/  
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Landis Y. Lain  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: June 12, 2009

Date Mailed: June 12, 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:

