

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: 2009-17135
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 2, 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 June 2, 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 October 10, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On December 11, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical-Vocational Rule 202.17.

(3) On December 17, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On February 6, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On April 20, 2009, the State Hearing Review Team again denied claimant's application stating that claimant could perform other work in the form of light work per 20 CFR 416.967(b) pursuant to Medical-Vocational Rule 202.11 and stated that this may be consistent with past relevant work. However, there is no detailed description of past work to determine this. In lieu of denying benefits as capable of performing past work a denial to other work based on Vocational Rule will be used.

(6) The hearing was held on June 2, 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 2, 2009.

(8) On June 9, 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 201.10 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 unskilled work. Therefore, based on the claimant's vocational profile of closely approaching advanced age, with a limited education, MA-P is denied using Vocational Rule

202.10 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 50-year-old man whose birth date is [REDACTED]. Claimant is 5' 8" tall and weighs 135 pounds. Claimant attended the 11th grade and has no GED. Claimant is able to read and write and does have basic math skills.

(10) Claimant has worked as a mechanic for approximately 17 years total, doing small engine repair.

(11) Claimant alleges as disabling impairments: heart disease, peripheral artery disease, generalized anxiety, leg cramps, emphysema, arteriosclerosis, back pain, hepatitis C, depression and hypertension.

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 2004. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a Medical Examination Report dated [REDACTED] indicates that claimant has emphysema and leg pain but is normal in all areas of examination except for cardiovascular where he had claudication and peripheral vascular disease. Claimant was 66" tall and 135 pounds. His blood pressure was 180/90. The clinical impression was that claimant's condition was stable. He could occasionally lift 20 pounds or less, but never lift 25 pounds or more. Claimant could stand and/or walk less than two hours of an eight hour day. He could use his upper extremities for repetitive actions such as simple grasping, reaching, pushing/pulling and fine manipulating and use both legs and feet for operating foot and leg controls. (Pages 11, 12)

An x-ray report dated [REDACTED] of the lumbar spine indicates that there was boney demineralization with some degenerative change in the lumbar spine. Vascular calcifications were seen as was a stent in the right iliac artery. A calcification projecting over the right flank area may be related to the right kidney. A gallstone was not excluded. (Page 15) An x-ray of the chest dated [REDACTED] indicates that the lungs were emphysematous in appearance and that there were parenchymal densities which may reflect chronic disease or scars within the middle and lower lungs especially on the right. The tiny density projecting over the lateral margin of the left lower chest is probably related to overlapping structures. The heart was not enlarged, the boney structures were intact. (Page 16)

A [REDACTED] form dated [REDACTED] indicates that claimant was 5' 7" tall and weighed 130 pounds. His blood pressure was 160/84. He was ambulatory. His hygiene and grooming appeared to be adequate. He looked older than his stated age. He also was observed

with a beard and mustache. He maintained fairly good eye contact. Claimant was in good contact with reality. When asked how he feels about himself, he stated it depends on the day. At times I feel good and other times not so good. I lost my home and my job. Claimant responded to questions spontaneously. He did not exhibit any thought blocking. There were no hallucinations, delusions or obsessions. He claimed when he was drinking he considered himself to be social but can be aggressive. He said that now that he has stopped drinking, he becomes more nervous and has a hard time making decisions. His energy and motivation depend on a day-to-day basis according to the claimant. His concentration was okay but his memory comes and goes. He said he has difficulties falling asleep and staying asleep. He complains of leg cramps. He has poor appetite and has lost weight. He appeared to be euthymic and his affect constricted. Claimant gave the date as [REDACTED] and he gave the general location of the clinic as [REDACTED]. He was able to repeat 3 and 4 digits forward and not backward. He was able to recall 3 of 3 objects in three minutes. He gave his birth date as [REDACTED]. He was asked to name five large cities, he said, Detroit, Chicago, Dallas, Fort Lauderdale and Georgia. When asked about current events he mentioned the mayor's scandal. In his calculations: $100-7=96$ and $13+9=14$. When asked to interpret the proverb "don't cry over spilled milk," he said, "don't cry over things, don't whine or complain." In similarities and differences when asked how a bush and a tree are alike, he said, they have leaves. When asked how they are different he said, one is taller. When asked what he would do if he discovered fire in a theater, he said, I would go where the exit is and help others get out. He was diagnosed with dysthymic disorder, generalized anxiety disorder, alcoholism, nicotine dependence, with history of cocaine, cannabis and PCP abuse. His GAF was 55 and his prognosis was fair. He needed to continue treatment, therapeutic intervention and support services. (Page 26, 27)

A medical report dated [REDACTED] indicates that claimant was well-developed, well-nourished, well-built, well-cooperative and not in acute distress. His speech was intelligible. He was 5' 7" tall and weighed 130 pounds. Pulse was 76. Respiratory rate was 14. Blood pressure was 160/84 and 162/82. His visual acuity without glasses was 20/25 on the right and 20/30 on the left, both eyes 20/25. The claimant walked without ambulatory aid. Gait was normal. Functional capacity of walking was 25-30 yards. Claimant was normocephalic/atraumatic. Eyes, lids were normal. There was no exophthalmos, icterus, conjunctival erythema or exudates noted. Extraocular movements were intact. There was no discharge in the external auditory canal. No bulging, erythema, or perforation of the visible portion of the tympanic membrane noted. On the nose, there was no septal deformity, epistaxis or rhinorrhea. The teeth were in fair repair. No ulcerations of the tongue or throat. No gingivitis. His neck was supple. No JVD noted. No tracheal deviation. No lymphadenopathy. No accessory muscle usage. Thyroid was not visible or palpable. In his respiratory system his chest was symmetrical and equal to expansion. There was an oblique scar on the right posterolateral chest of 32 cm. The lung fields were clear to auscultation and percussion bilaterally. There were no rales, rhonchi or wheezing noted. No retraction of intercostal muscles noted. No accessory muscle usage noted. No cyanosis or clubbing of the fingers noted. There was no tachypnea or tachycardia. In the cardiovascular he had a regular rate and rhythm. Normal S1, S2. No S3 or S4. No murmur of gallop audible. There was no palpable thrill. In the gastrointestinal field there was a vertical scar extending from the epigastrium to the symphysis pubis. There was an oblique scar in the left middle abdomen. Abdomen was non-distended, soft, non-tender with no rigidity or guarding. No rebound tenderness. No organomegaly. Liver and spleen were not palpable. Bowel sounds were present. No hernias. No masses palpable. On examination of both groin areas, there were vertical scars on

both femoral regions of 11 cm. On the skin there was no significant skin rash, dermatitis or ulcers. In the extremities, left dorsalis pedis 2+, right dorsalis 1+. There was no pedal edema. There was no calf tenderness, clubbing, peripheral edema, varicose veins, pigmentation, brawny edema, stasis dermatitis, chronic leg ulcers, muscle atrophy, joint deformity, effusion or enlargement noted. There was no pallor, dependent rubor, coolness, cyanosis, ulceration or gangrene. There was no sensory loss to touch, position, vibration or pain over both feet and legs. Femoral, popliteal and posterior tibialis were 2+ bilaterally.

The claimant was able to get up from the chair and go to the table without assistance. There was no paravertebral spasm noted. No muscle wasting or deformity of the spine noted. Straight leg raising was negative to 90 degrees bilaterally. Patrick's test was negative bilaterally. The claimant was able to walk on heels and toes as well. The claimant was able to squat and arise from a squatting position completely. Handgrip strength and pinch strength were normal and equal in both hands. The claimant could button and unbutton clothing normally with both hands. Gross and fine dexterity were intact in both hands. Neurologically, the claimant was alert, awake and oriented to person, place and time. Cranial nerves II-XII were intact. Sensation was intact to touch, pain, pinprick, temperature, deep sensation and vibration. Motor power was 5/5 in all extremities. There was good muscle tone without flaccidity, spasticity or paralysis. Deep tendon reflexes were 2+ bilaterally in upper and lower extremities. Cerebellar signs were intact. Finger-to-nose test was done well. Tandem walk, heel walk and toe walk were done well. Gait was steady without the use of an ambulatory aid. Claimant had a diagnosis of hypertension and generalized atherosclerosis, status post aortofemoral bypass surgery, but was stable at this time. On clinical examination, dorsalis pedis on the left was 2+, right was 1+, posterior tibial, popliteal and femoral were 2+ bilaterally. (Pages 30, 31)

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 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 49 indicates the examination areas are normal with the exception of the cardiovascular. The DHS-49 indicates that assistive devices are not medically needed or required for ambulation. There was no opinion rendered as to how long claimant can sit although it is stated that claimant can only stand or walk less than two hours out of an eight hour day. The clinical impression 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, 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 or mental 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. Claimant was able to answer all the questions at the hearing and was responsive to the questions. Claimant was oriented to time, person and place during the hearing.

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).

This Administrative Law Judge finds that the evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment which has restricted his activities of daily living, social functioning, concentration, persistence or pace. There is insufficient objective medical evidence contained in the file of depression or cognitive dysfunction that is so severe that it would prevent claimant from working at any job. For these reasons, this Administrative Law Judge finds that claimant has failed to meet his burden or 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's medical reports basically show that claimant has normal findings. Claimant retains bilateral manual hand dexterity. The claimant's past work was light. There is insufficient objective medical evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform his prior work as a small engine mechanic even with his

impairments. Therefore, if claimant had not already been denied at Step 2, he would again be denied at Step 4.

Claimant testified on the record that he can walk 50 yards, stand for an hour at a time and sit for a half an hour at a time. Claimant testified that he can shower and dress himself and tie his shoes and that he can touch his toes. Claimant stated that he can carry 25 pounds, that he is right-handed and that he has carpal tunnel syndrome in both hands and arms but there is no evidence of that in the file. Claimant testified that his level of pain on scale from 1 to 10 without medication is an 8 and with medication is a 2/3. Claimant testified that he does continue to smoke a pack of cigarettes a week even though his doctor has told him to quit and he is not in a smoking cessation program. Claimant 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).

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 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 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. In addition, claimant did testify that he does receive some substantial relief from his pain medication. 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.

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 22, 2009

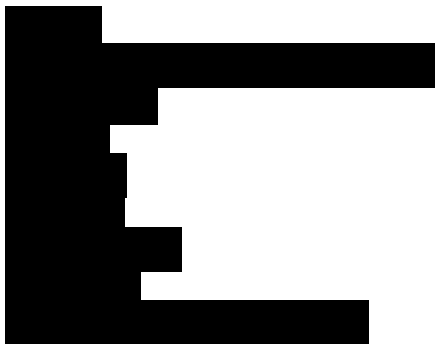
Date Mailed: July 22, 2009

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

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