

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: 2009-17597

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

July 9, 2009

Calhoun 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 July 9, 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) benefits?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) On July 31, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On September 3, 2008, the Medical Review Team approved claimant's application for State Disability Assistance benefits from July 2008 through February 2009 and denied claimant's application for Medical Assistance benefits stating that claimant's impairments lacked duration.

(3) On December 2, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On January 29, 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 is capable of performing other work in the form of medium work per 20 CFR 416.967(c) and unskilled work per 20 CFR 416.968(a) pursuant to Medical-Vocational Rule 203.25 and commented 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 a Vocational Rule will be used.

(6) The hearing was held on July 9, 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 October 14, 2009.

(8) On October 15, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the in the form of light work per 20 CFR 416.967(b) pursuant to Medical-Vocational Rule 202.17.

(9) Claimant is a 44-year-old man whose birth date is [REDACTED]. Claimant is 6' tall and weighs 250 pounds. Claimant recently gained 25 pounds. Claimant attended the 8th grade and has no GED and stated that he is barely able to read and can count money but barely has basic math skills.

(10) Claimant last worked in 2002 for [REDACTED] pushing carts. Claimant was also self-employed as a musician, lead guitar player for fifteen years.

(11) Claimant alleges as disabling impairments: degenerative disc disease, carpal tunnel syndrome in both hands, sleep apnea, depression, bipolar disorder, attention deficit hyperactive disorder, polysubstance abuse, and arthritis.

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 2002. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that an MRI of the lumbar spine dated [REDACTED] states that the conus were normal. There was gradual tapering of the lumbar cistern pattern that is compatible with congenital type spinal stenosis. At L1-2 and L4-5 disc bulges circumferentially without causing significant canal or foraminal narrowing. At L5-S1 there is a left paracentral disc protrusion that causes slight deformity of the thecal sac. No paraspinal masses. The impression is multi-level intervertebral osteochondrosis with mild congenital type spinal stenosis and left paracentral disc protrusion at L5-S1. (p. B30)

An MRI of the cervical spine dated [REDACTED] indicates that there were spondyloarthritic changes of the lower cervical spine. There was mild disc desiccation at C5-6 and C6-7 where small endplate osteophytes and diffuse bulge of the annulus, particularly at C5-6, slightly efface the anterior CSF spaces without significant mass on the spinal cord. At those levels there was also noted some uncovertebral joint disease, left greater than right resulting in neural foraminal narrowing at those two levels, predominantly on the left. There was no focal disc herniation. (p. B31)

A medication review dated [REDACTED] indicates that claimant is a middle-aged Caucasian who was cooperative, casually dressed, and had fair grooming. His mood was described as so-so. His affect was appropriate except for the given fact that he was somewhat manipulative and somewhat dependent on stimulants and wanted to get back on stimulants and

other controlled substances such as opiates. His thoughts were coherent. There were no suicidal or homicidal ideations. His insight and judgment were limited. He did not appear to be hyperactive or inattentive presently. (p. B33)

A medication review of [REDACTED] indicates the claimant was rocking constantly but cooperative and had good attention span during the session. He did not appear hyperactive and his mood was mildly improved but stated he could be better than this. His affect was mildly restrictive. There were no suicidal or homicidal ideations. His thoughts were very coherent. His assessment was bipolar disorder, rule out mood disorder NOS, history of cocaine and heroin dependence in continued remission. (p. B37)

An assessment on [REDACTED] indicates that claimant was returning for an annual assessment after two no-shows. He had been clean for a year. He had not been attending NA meetings, but believed he was done with crack. (p. B43) The report indicated that claimant's general appearance was neat and clean and he was appropriately dressed. He appeared to be of average intellectual assessment. His communication was normal. His mood was unremarkable. His affect was flattened. His speech was normal for age and intellect. (p. B50) His thought content and perceptions were unremarkable. (p. B51) His behavior and motor activity was normal and alert, although he rocked back and forth in his chair. (p. B52) He was oriented to person, place, and time. He had fair insight, his memory was impaired short-term, but his reality orientation was intact. He was not suicidal. He was not homicidal. He denied any physical aggression. (p. B53) His Axis V GAF was 42 and he currently had no legal issues, but child support issues continue. Takes narcotics for his back and cannot afford his other medications. His wife was laid off. (p. B54)

A Medical Examination Report contained in the file indicates that the clinical impression is that claimant is stable and that he can occasionally lift ten pounds and frequently lift less than ten pounds, but never lift twenty pounds or more. He could stand and/or walk less than two hours in an eight-hour workday. There was no assessment as to his ability to sit. Claimant did not need assistive devices for ambulation and he could use both of his upper extremities for simple grasping, but not for reaching, pushing/pulling, and fine manipulating. He could not operate foot and leg controls with either foot or leg. His mental limitations were in sustained concentration and social interaction. (p. B82) Claimant was 5' 11" tall and weighed 250 pounds. His blood pressure was 120/90 and he was right-hand dominant. He was normal in all examination areas except the musculoskeletal where he had tenderness in his right lumbar paraspinal muscles and neurological where he had mild weakness in his quad, hamstrings, and dorsal/plantar flexion on the right. The examination date was [REDACTED]. (p. B83)

Claimant was hospitalized from [REDACTED] through [REDACTED] as a psychiatric inpatient due to an overdose in a setting of polysubstance abuse and untreated bipolar illness. (p. 85)

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. In addition, he does have some problems with his back. However, there are insufficient objective corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. 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 impairment.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers mental limitations resulting from his reportedly depressed state. Although claimant does testify that he does have a bipolar disorder, claimant's mental status examinations have been basically normal. 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 he had heavy use of alcohol as well as polysubstance abuse which would have contributed to his physical and any alleged mental problems. This Administrative Law Judge finds that claimant does not have any functional limitations in the form of restrictions of activities of daily living, social functioning, concentration, persistence or pace, or the ability to tolerate increased mental demands associated with competitive work which could be contributed to his depression or cognitive dysfunction, but should be contributed to his polysubstance abuse. 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. Claimant testified on the record that he pushed carts for [REDACTED] and he was a self-employed musician, lead guitarist. This Administrative Law Judge finds that there is insufficient objective medical evidence in the record which indicates that claimant cannot perform his prior work as a push cart person or as a musician. Therefore, if claimant had not already been denied at Step 2, he would again be denied at Step 4. However, since claimant did testify on the record that he can only walk from the parking lot to the building, can stand for ten minutes, sit for ten minutes at a time, shower and dress himself, squat very little, not bend at the waist, and he can only tie his shoes sitting down, and cannot touch his toes, this Administrative Law Judge will continue to proceed through the sequential evaluation process. Claimant did testify that the heaviest weight he can carry is five to ten pounds and that his right-handed and that he has carpal tunnel syndrome and that his legs and feet are fine because he receives injections in his legs. Claimant testified that his level of pain on a scale from one to ten without medication is an eight and with medication is a six. Claimant did testify that he does continue to smoke a pack of cigarettes per day even though his doctor has told him to quit and he's not in a smoking cessation program. Claimant did testify on the record that he has never had a problem with alcohol, but did have a prior problem with cocaine.

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).

This Administrative Law Judge finds that claimant is not in compliance with his treatment program as he does continue to smoke cigarettes even though his doctor has told him to quit.

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. The claimant's testimony as to his limitations indicates that he should be able to perform light or sedentary work.

The Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) is material to a person's disability and when benefits will or will not be approved. The regulations require the disability analysis be completed prior to a determination of whether a person's drug and alcohol use is material. It is only when a person meets the disability criterion, 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 DAA to a person's disability.

When the record contains evidence of DAA, a determination must be made whether or not the 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 the drugs or alcohol and whether any of these remaining limitations would be disabling.

Claimant's testimony and the information contained in the file indicate that claimant has a history of tobacco and drug abuse. In 1996 Congress amended the Social Security Act to preclude the award of SDI and SSI benefits when alcoholism or drug addiction materially contributes to the claim of disability. The 1996 amendment provides that an individual should not be considered to be disabled for purposes of this title if alcoholism or drug addiction would be a contributing factor material to the determination that the individual is disabled. Public Law 104-121, Section 105(b)(1), 110 STAT. 853, 42 USC 423(d)(2)(C), 1382(c)(a)(3)(J) Supplement Five 1999. This Administrative Law Judge finds that after a careful review of the credible and substantial evidence on the whole record; 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 person with claimant's vocational background at age 44, a younger individual, 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, p. 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: January 6, 2010

Date Mailed: January 7, 2010

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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