

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: 2009-20918
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 24, 2009
Wayne 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 24, 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 November 6, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On March 9, 2009, the Medical Review Team denied claimant's application stating that claimant's impairments were non-exertional.

(3) On March 11, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On March 17, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On May 11, 2009, the State Hearing Review Team again denied claimant's application stating that claimant could perform unskilled work per 20 CFR 416.968(a).

(6) Claimant is a 47-year-old man whose birth date is [REDACTED]. Claimant is 5' 11" tall and weighs 155 pounds. Claimant recently lost 25 pounds. Claimant received his GED in 1991 and is able to read and write and does have basic math skills.

(7) Claimant has never worked in his adult life. Claimant was incarcerated for 23 years and got out in [REDACTED]. Claimant receives Food Assistance Program benefits and the Adult Medical Program.

(8) Claimant alleges as disabling impairments: a bad back, mental illness, schizophrenia, the inability to be around people, and glaucoma.

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 never worked.

Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a mental health examination indicates that claimant was 5' 11" tall and weighed 165 pounds. The claimant came to the appointment on [REDACTED] by bus and on his own. Claimant stated that he takes a bath or shower every other day and everyday in the summer and he called and got exact directions to be able to come to the center. Claimant presented as being in questionable contact with reality in light of his reported psychotic experiences. The claimant answered questions in a logical, goal-directed fashion for the most part, but the contact was strange and psychotic at times. The claimant stated that he saw and heard things and that he has seen the devil. Claimant spelled his first and last names correctly and knew the date. He said that the place that he visited was a residual home in a doctor's office. Claimant repeated four digits forward and four digits backward and repeated three out of three objects immediately after they were stated to him. Claimant recalled one out of three objects after a delay of three minutes remembering pencil but forgetting key and quarter. The claimant named the Presidents in reverse order: Obama, Bush, Clinton, Bush's father...that's as far as he could remember. He knew his birth date and his age. Claimant stated that five large cities were Philadelphia, Detroit, Minnesota, Cleveland, and asked if Pennsylvania was a state. He couldn't name any famous living people but the current events

were foreclosure on homes and the economy. Serial 7's from 100: He stated 93, 84 and 79. He stated $4+7=11$, $16-9=8$, $4 \times 6=24$ and $42/7=6$. Claimant stated that the grass was greener on the other side means it looks better on the other side. Don't cry over spilled milk means don't cry when something bad happens. Similarities and differences: Claimant stated a bush and a tree were alike because they both grew out of the ground but different because a tree is taller and a bush wider normally. Claimant stated that he would put a stamped addressed envelope in a mailbox if he found it and if there was a fire in a theater he would get up and tell somebody. When asked who he would tell, he stated like an usher, notify somebody. His plans for the future were to go to school, but he can't now. Claimant's diagnoses were polysubstance abuse (cocaine, opiates, PCP, cannabis, and alcohol) in reported 10-year plus remission, psychosis, NOS, antisocial personality disorder, medical problems as reported above, and his GAF was 52. The prognosis was fair as claimant does have some cognitive strengths as demonstrated in the sensorium and mental capacity portion of the exam. In light of his history of substance abuse, he was not felt to be capable of managing his own benefit funds. (Pages 12-16)

A Mental Residual Functional Capacity Assessment in the record indicates that claimant is markedly limited in many areas and only moderately limited in a few areas and that he has a schizoaffective disorder. There is no medical evidence of a physical impairment in the file. At Page 26, claimant stated that the medicine is helping him with his mental illness.

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 was oriented to time, person, and place during his psychiatric hearing as well as during the hearing. This

Administrative Law Judge cannot give weight to the Mental Residual Functional Capacity Assessment which indicates that claimant is markedly limited in many areas when he is able to catch the bus by himself, attend [REDACTED] meetings as well as meet with his parole officer, came to the hearing by himself and represented himself. Claimant was able to answer all the questions at the hearing and was responsive to all 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).

There is insufficient objective medical 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 drug abuse which would have contributed to his physical and any alleged mental problems. There is insufficient objective medical evidence in the record indicating that claimant has such severe functional limitations in terms of restrictions in activities of daily living, social functioning, concentration, persistence or pace or ability to tolerate increased mental demands associated with competitive work. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical or 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 housework. Claimant testified that he is able to do laundry, do the dishes, make the bed, sweep, empty the trash, as well as shovel snow, cut grass and do all yard work. The record in the file indicates that claimant has done some general maintenance work in his past before he was incarcerated. Therefore, this Administrative Law Judge finds that claimant could probably perform his past work as a maintenance person even with his impairments. Therefore, claimant is disqualified from receiving disability at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same

meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

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

Claimant has submitted insufficient objective medical evidence that he lacks the residual functional capacity to perform some other less strenuous tasks than in his prior employment or that he is physically unable to do medium, 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 medium, 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 medium, 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. Claimant testified that he does control his back pain with over-the-counter 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 medium, light or sedentary work even with his impairments. Under the Medical-Vocational guidelines, a younger individual (age 47), with a high school education and an unskilled or no work history who is limited to medium 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. Claimant would probably benefit from a referral to Michigan Rehabilitation Services to determine his work eligibility status.

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 medium, 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 29, 2009

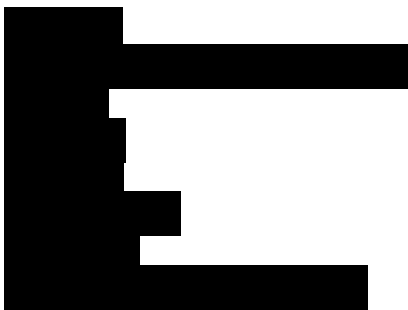
Date Mailed: July 29, 2009

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.

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