

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: 2009-21926

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 30, 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 30, 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 June 12, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On December 1, 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 March 12, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On May 22, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The claimant has normal range of motion of all joints and was able to ambulate without the use of a cane. He has high blood pressure and is currently not being treated. He does not have any end organ damage. The mental examination reported no limitation. The claimant would be able to do simple, unskilled, light work. 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 simple, unskilled, light work. In lieu of detailed work history, the claimant will be returned to other work. Therefore, based on the claimant's vocational profile of closely approaching advanced age, 12th grade education and a history of unskilled work, MA-P is denied using Vocational Rule 202.11 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.

(6) Claimant is a 51-year-old man whose birth date is [REDACTED]. Claimant is 5' 11" tall and weighs 208 pounds. Claimant is a high school graduate and is able to read and write, add, subtract, multiply, and count money.

(7) Claimant last worked as a technician/clean-up crew person in 2003. Claimant has also worked temporary jobs and has also worked doing things like soldering and unloading trucks.

(8) Claimant receives the Adult Medical Program and Food Assistance Program benefits and lives in a shelter.

(9) Claimant alleges as disabling impairments: a right hand and thumb and left ankle and head injury.

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 2003 except for odd jobs. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that an internal medicine evaluation from [REDACTED] indicates that the claimant was alert and oriented x3. His

height was 5' 11" tall. His weight was 210 pounds. Blood pressure was 140/100. Visual acuity was 20/20 for the right eye and 20/15 for the left eye. Both eyes were 20/13 without glasses. His HEENT: Pupils were equal, round, and reactive to light. Extraocular movements were full. No icterus. No conjunctival pallor. The fundi were benign. No exudates or papilledema noted. There was no JVD. No carotid bruits. No cervical lymphadenopathy. No thyromegaly. The throat was clear. There was no thrush noted. The tongue was central. The neck was supple with full range of motion. No lesions noted on the tongue. There were no scars noted on the scalp. There was a small scar on the left upper lip near the left nostril. Suture marks were noted at the site. The lungs were clear to auscultation bilaterally. Cardiovascular: S1 and S2 were regular. No murmur or gallop was noted. PMI was not displaced. The abdomen was soft and non-tender. No masses were felt. Bowel sounds were normal. There was no organomegaly. In the musculoskeletal the range of motion of the C-spine was full. Range of motion of the thoracolumbar spine was full. There was no midline spine tenderness. Bilateral knees, hips, and right ankle had full range of motion. Left ankle flexion and extension was normal but abduction and adduction was slightly limited. The claimant was able to bear weight on the left ankle. The claimant had scars on the left ankle medially and laterally extending upward from the malleolar region about 10 cm long. There was crepitus in the right knee. No effusion noted. There was a scar noted on the lateral aspect of the right knee on the patellar border about 7 cm long. Bilateral shoulder, elbows, and wrists had full range of motion. The dorsalis pedis was bilaterally 1+. No pedal edema. No clubbing or cyanosis. Capillary refill was intact and normal. Gait was normal. Claimant had a cane in the right hand. He was able to walk into the room without a cane with minimal limp on the left side. SLR's were negative. Neurologically, claimant was alert and oriented to time, person, and place. Speech was normal. Cranial nerves II through XII were intact. Memory:

Claimant was able to tell his birth date and current president's name. Babinski was negative. Romberg test was negative. Finger-to-nose test was normal. DTR's were bilaterally symmetrical and 2+. The muscle power was 5/5 in all extremities. Pain and touch were intact bilaterally symmetrical and equal. The claimant could get off the table and chair without any assistance. (Pages 12-18)

Claimant did allege chronic pain in the left ankle and surgical treatment for a fracture of the left ankle two times in the past. He was a pedestrian hit by a car and he was taken to [REDACTED] by ambulance and treated for a fracture of the left ankle. He did not have any head injuries. In the second incident the claimant was robbed and required to be taken to [REDACTED] by ambulance because he was beaten up and he was beaten in the head and had a fractured left ankle requiring another surgery. Claimant had no seizures and no skull fractures.

A psychological examination on [REDACTED] indicates that claimant was a 51-year-old African-American male who appeared his stated age. He came in with his sister-in-law. He walked with a limp with the help of a cane. He had a trimmed beard. Hygiene and grooming were adequate. The claimant sat in a chair comfortably and did not show any unusual or bizarre behavior. Claimant was 5' 11" tall and weighed 210 pounds. The claimant was in touch with reality. His self-esteem was good. Psychomotor activity was normal. He had no motivation. When asked what do you want to do in your life, the claimant said I want to live long. His insight was limited. The claimant's speech was clear, coherent, and goal-oriented. The claimant's thinking processes were well-organized and easy to follow. Claimant denied any hallucinations, delusions, or paranoid ideations. The claimant denied current suicidal or homicidal ideations. The claimant had been feeling depressed on and off since 1997. The claimant said yes when asked if he was feeling hopeless, helpless, or useless. The claimant had no manic or hypomanic

episodes. The claimant had no obsessions, compulsions, or anxiety attacks. The claimant was cooperative during the evaluation. Affect was appropriate to thought content and his mood was calm. Claimant was alert and oriented to time, person, and place. The claimant was able to repeat four digits forward and four of four digits backward immediately. The claimant was able to recall two of three objects after five minutes. The claimant correctly stated his birth date. When asked to name the past few presidents, the claimant said Carter and Ford. When asked to name five large cities, the claimant said Detroit and St. Louis. When asked to name current famous people, the claimant said John Wayne and Michael Jordan. When asked to name important events the claimant said the Iraq war. Calculations: The claimant said $7+5=12$ and $6 \times 5=30$. When asked to subtract sevens from 100, the claimant said 92. Serials of 3's from 20 were 17, 14, 11, and 8. Abstract Thinking: When asked to interpret "the grass is greener on the other side of the fence", the claimant was not able to answer. When asked to interpret "don't cry over spilled milk", the claimant was not able to answer. When asked how a bush and a tree were different, the claimant said the tree is taller. When asked how they were alike, the claimant said both of them were plants. The claimant said he would mail it if he found a stamped, self-addressed envelope. When asked what he would do if he discovered a fire in a theater he said get out. When asked about plans for the future, the claimant said he wanted to get better. He was diagnosed with dysthymic disorder, pain in his right hand, and a GAF of 60 with a guarded prognosis. (Pages 19-21)

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 durational requirement of 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 Medical Examination Report in the file indicates that on [REDACTED], claimant was normal in all areas of examination except for some scars on his left ankle and right knee crepitus. The clinical impression is that claimant is stable and he was able to stand or walk at least two hours in an eight-hour day and sit about six hours in an eight-hour day. Claimant could occasionally lift 20 pounds or less and he could use his upper extremities for repetitive actions such as simple grasping, reaching, pushing/pulling, and fine manipulating and could operate foot and leg controls with both feet and legs. (Pages 5-6) Claimant has no mental limitations. 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. For these reasons, this Administrative Law Judge finds that claimant has failed to meet his burden of proof at Step 2. Claimant must be denied benefits at this step based upon his failure to meet the evidentiary burden.

If claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of claimant's condition does not give rise to a finding that he would meet a statutory listing in the code of federal regulations.

If claimant had not already been denied at Step 2, this Administrative Law Judge would have to deny him again at Step 4 based upon his ability to perform his past relevant work. Claimant's past relevant work was mostly temporary jobs. Claimant could do light work even

with his impairments. There is insufficient objective medical evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work that he has engaged in, in the past. Therefore, if claimant had not already been denied at Step 2, he would again be denied at Step 4.

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

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

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 testified on the record that he has memory problems and headaches.

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/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. 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.

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.

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 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: August 6, 2009

Date Mailed: August 6, 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:

