

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: 2009-23003
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 22, 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 July 22, 2009. Claimant personally appeared and testified via three-way teleconference call.

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 September 22, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On February 25, 2009, the Medical Review Team denied claimant's application stating that claimant's impairments were non-severe and non-exertional.

(3) On March 9, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On March 13, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On June 1, 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) and unskilled work per 20 CFR 416.968(a) pursuant to Medical-Vocational Rule 202.20 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, light work. Therefore, based on the claimant's vocational profile of a younger individual with a high school education, MA-P is denied using Vocational Rule 202.20 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 44-year-old man whose birth date is [REDACTED]. Claimant is 6' 6" tall and weighs 326 pounds and recently gained 50 pounds. Claimant is a high school graduate and is able to read and write, but not well, and also has basic math skills.

(10) Claimant last worked March 7, 2008 at [REDACTED] on the assembly line for eight years where he was fired. Claimant is currently receiving unemployment compensation benefits in the amount of [REDACTED] biweekly which runs out September 2009. Claimant also received [REDACTED] per month in Food Assistance Program benefits.

(11) Claimant alleges as disabling impairments: a crushed right wrist upon which he has had eight surgeries, seizures, hypertension, diabetes mellitus, bipolar disorder, and anxiety.

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 March 2008. Claimant is not disqualified from receiving disability at Step 1.

It should be noted that in order to qualify legally for unemployment compensation benefits, a person must be monetarily eligible, totally or partially unemployed, and have approvable job separation. The person must meet certain weekly legal requirements, one of which is being physically and mentally able to work, being available for and seeking work, and filing his weekly claim for benefits on a timely basis. This Administrative Law Judge finds that the receipt of unemployment compensation benefits and the statement that a person is physically and mentally able to work is inconsistent with the receipt of disability benefits and claimant is hereby denied.

The objective medical evidence on the record indicates that a medical examination of [REDACTED] indicates that claimant was obese but well-developed and well-nourished. He was cooperative and did not appear in acute distress. He was awake, alert, and oriented x3. He was dressed appropriately and answered the questions relevantly. His height was 6' 6" and his weight was 286 pounds. His pulse was 78, respiration was 16, and blood pressure was 136/88. His HEENT: normocephalic/at traumatic. Eyes: no icterus. Conjunctiva was not erythematous. Cornea was clear. The eye canals were clear with intact tympanic membranes. Nose and nasal mucosa were not congested. Claimant had natural dentition. Throat had no erythematous. The neck was supple. No JVD or tracheal deviation. No lymphadenopathy or accessory muscle use. Thyroid was not visible or enlarged. Chest was symmetrical with equal expansion. Lung fields were clear to percussion and auscultation. There were no rales or wheezes audible. Cardiovascularly his heart had regular rate and no murmur audible. Abdomen was soft and non-tender. Bowel sounds were present. Liver and spleen were not enlarged. His skin had no significant skin lesions noted. His extremities showed no tenderness in the lumbosacral spine area. No obvious spinal deformity, swelling, or muscle spasm noted. Pedal pulses were 2+ bilaterally. No calf tenderness,

no ankle edema, no chronic leg ulcers, varicose veins, muscle atrophy, joint deformity or enlargement noted. The claimant was able to get up from the chair and table without assistance. There was no paravertebral muscle spasm noted. Deep tendon reflexes were within normal limits in the upper and lower extremities except for the right wrist. Straight leg raise was negative to 90 degrees bilaterally. Claimant was able to heel walking, toe walking, and tandem walking without any problems. Romberg and finger-toe testing were fairly well done. Squatting and recovering from squatting were done to a fair extent. Gross and fine dexterity appeared bilaterally intact. Neurologically, the claimant was awake, alert, and oriented to person, time, and place. Vision without glasses was 20/70 in the right eye and 20/50 in left eye. Vision with glasses was 20/50 on the right and 20/20 on the left. The pupils were 4 mm and equal and reactive to light. No ptosis or nystagmus noted. Face was symmetrical. The claimant appeared to hear conversational voice. The jaw resisted closure and swallowing was intact. Gag reflex was intact. The uvula was midline. Head and shoulder movement against resistance appeared fairly equal. Tongue protruded at the midline. There was no tongue atrophy or fasciculations seen. Sensory function was grossly intact to pinprick and touch. Motor function except for frozen right wrist with no movement of the right wrist, there was full range of motion of all extremities and the muscle tone is fair without flaccidity, spasticity, or focal paralysis observed. Cerebellar functions: there was no ataxia. No nystagmus. Finger-to-nose test was done fairly well. Gait was steady without walking aid. His seizure disorder was fairly well controlled and claimant had ADHD and had problems with anger and impulse control. The strength in the right wrist was 3/5 as compared to the strength of the left wrist which was 5/5. (Pages 5-6)

A Medical Examination Report dated [REDACTED] indicated that claimant was 6' 6" and 311 pounds. His blood pressure was 160/110. He was right-hand dominant. However, claimant testified that he is left-hand dominant. The medical report indicated that claimant's clinical impression was that he was stable and that he was frequently able to lift less than 10 pounds. Claimant could stand and/or walk less than two hours in an eight-hour day, but he did not need assistive devices for ambulation. The medical report indicated that claimant could not do simple grasping, reaching, pushing/pulling, and fine manipulating with either hand and he couldn't operate foot or leg controls with either feet/leg. The claimant had limited reading and writing and social interaction. (Pages 44-45)

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 does have some problems with his right hand; however, the following examples of light or sedentary (one-handed), unskilled jobs that claimant can do: are an usher, counter clerk, surveillance system monitor and a furniture/rental consultant in a retail business. County business patterns show that over 751,000 workers are employed in Michigan retail industries, indicating that such jobs exist in significant numbers in this region's economy. Over 30,000 workers are employed in Michigan in amusement and recreational services in which usher jobs are prevalent. Over 15,000 people are employed in public transportation and over 127,000 are employed in general merchandise stores, photo finishing, laboratories and photography supply stores, indicating such jobs exist in significant numbers in this region's economy. This Administrative Law Judge cannot give weight to the treating physician's DHS-49 as it is internally inconsistent. The 49 indicates that

claimant cannot use either of his hands for simple grasping, reaching, pushing/pulling, or manipulating; however, the objective medical reports in the file indicates that claimant does retain bilateral manual hand dexterity even though he cannot move his right wrist. The strength in claimant's right wrist is 3/5 and the strength in his left wrist is 5/5. Claimant's condition is considered to be stable and there were no laboratory or x-ray findings listed in the file or supported on the DHS-49. The form indicates that assistive devices are not medically required or needed for ambulation; however, there is no opinion rendered regarding how long claimant can walk or sit. 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 DHS-49 has restricted claimant from tasks associated with occupational functioning based on the claimant's 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.

Claimant has testified on the record that he does have bipolar disorder and anxiety.

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 in the record indicating claimant suffers mental limitations resulting from his reportedly depressed state. 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. There is no 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 document that he had heavy use of alcohol up to five months before the hearing which would have contributed to his physical and any alleged mental problems. 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 his past relevant work. Claimant testified on the record that his right wrist was crushed in 2000 and that he has had eight surgeries since; however, claimant did not stop working until March 7, 2008 and he stated that he was fired because he did have a seizure and he did not return a doctor's statement. Therefore, this Administrative Law Judge finds that claimant did not lose his job based upon his health problems and was able to work with his crushed wrist up until March 2008. In addition, claimant testified he also worked in landscaping and as a cook in a restaurant. There is insufficient objective medical evidence in the record 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 as he did testify that he is able to walk approximately a half a mile, stand for 15-20 minutes at a time and sit all day with no limits. Claimant testified that he is able to bend at the waist, touch his toes, as well as shower and dress himself and tie his shoes while he is sitting. Claimant testified that the heaviest weight he can carry is ten pounds and that he is left-handed and that he has some arthritis and a problem with his right wrist. Claimant testified that his level of pain on a scale from 1 to 10 without medication is a 7/8 and if he takes Advil it's about a 6. Claimant testified that he does smoke a pack of cigarettes per day and his doctor has told him to quit and he is not in a smoking cessation program.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

Claimant is not in compliance with his treatment program as he does continue to smoke despite the fact that his doctor has told him to quit.

Claimant testified that he is able to catch the bus daily and his bus ride is usually an hour to an hour and a half to his therapist and the psychiatrist. Claimant testified that he does clean his home by vacuuming, making his bed, doing the dishes, and he goes to the grocery store and pushes the basket while his girlfriend does the shopping. Claimant testified that he watches television 3-4 hours a day and that he sleeps most of the rest of the day. Claimant testified he is able to engage in sexual relations. Therefore, his Administrative Law Judge finds that 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. Claimant is disqualified from receiving benefits at Step 5.

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 alcohol, tobacco, and drug abuse. Applicable hearing is the Drug Abuse and Alcohol (DA&A) Legislation, Public Law 104-121, Section 105. The law indicates that individuals are not eligible and/or are not disabled where drug addiction or alcoholism is a contributing factor material to the determination of disability. After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that even if claimant did meet the definition of disability for purposes of Steps 1-5, he would not meet the statutory disability

definition under the authority of the DA&A Legislation because his substance abuse is material to his alleged impairments 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. Under the Medical-Vocational guidelines, a younger individual (age 44), with a high school education and an unskilled work history who is limited to light work is not considered disabled pursuant to Medical-Vocational Rule 202.20.

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: August 17, 2009

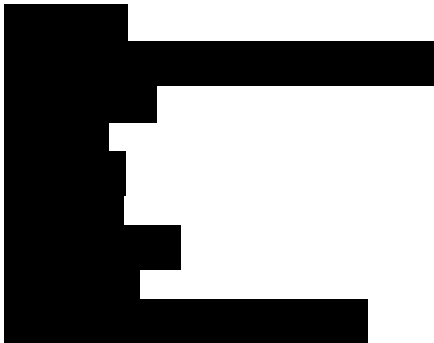
Date Mailed: August 18, 2009

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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