

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: 2009-23808

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

July 22, 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 July 22, 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 January 9, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On April 1, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

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

(4) On April 9, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On June 11, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The objective medical evidence presented does not establish a disability at the listing or equivalence level. The collective medical evidence shows that the claimant is capable of performing a wide range of 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 sedentary work. Therefore, based on the claimant's vocational profile of a younger individual, 9th grade education and a semi-skilled work history, MA-P is denied using Vocational Rule 202.18 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) The hearing was held on July 22, 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 July 23, 2009.

(8) On July 30, 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 pursuant to Medical-Vocational Rule 202.20 and commented that

additional medical evidence reviewed with regards to previous determinations and these previous findings are still supported.

(9) Claimant is a 44-year-old man whose birth date is [REDACTED]. Claimant is 5' 6" tall and weighs 180 pounds. Claimant recently lost 10 pounds. Claimant attended the 9th grade and has a GED. Claimant also attended [REDACTED] vocational training. Claimant is able to read and write and does have basic math skills.

(10) Claimant last worked January 2008 for a construction company as a cement finisher. Claimant worked doing cement work for approximately 30 years.

(11) Claimant alleges as disabling impairments: hypertension, herniated disc, and severe back pain. Claimant did not allege any mental impairment.

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

The objective medical evidence on the record indicates that the claimant has a limited range of motion of the lumbar spine and ambulated with a slight limp on the right side. His sensory function was intact. He was able to ambulate without a cane. His blood pressure was well controlled on medication (pp. 3-6). A [REDACTED] MRI of the lumbar spine indicates that claimant had moderate disc desiccation seen at L4-5 with no associated disc space narrowing. A focal central posterior protrusion with annular fissure was seen at the L4-5 level with no associated central canal stenosis or exit stenosis. MRI of the lumbar spine otherwise appeared unremarkable (new information p. 1).

A medical examination dated [REDACTED] indicates that on physical examination claimant was well-developed, well-nourished, and cooperative and in no acute distress. Claimant was awake, alert, and oriented x3. He was dressed appropriately and answered questions fairly well. He was 5' 6-1/4" tall and weighed 179 pounds. His pulse was 84. His respiratory rate was 16. Blood pressure was 110/64. His visual acuity without glasses was 20/25 bilaterally. HEENT: Normocephalic/atraumatic. EYES: Lids were normal. There was no exophthalmos, icterus, conjunctiva, erythema, or exudates noted. Extraocular movements were intact in the eyes. EARS: There was no discharge in the external auditory canals. No bulging erythema, perforation of the tympanic membrane noted. NOSE: There was no septal deformity, epistaxis, or rhinorrhea. MOUTH: The teeth were in fair repair. NECK: Supple. No JVD noted. No tracheal deviation. No lymphadenopathy. Thyroid was not visible or palpable. ENT: External inspection of the ears and nose revealed no evidence of acute abnormality. RESPIRATORY: Chest was symmetrical and equal to expansion. The lung fields were clear to auscultation and percussion bilaterally.

There were no rales, rhonchi, or wheezes noted. No retractions noted. No accessory muscle usage noted. No cyanosis noted. There was no cough. **CARDIOVASCULAR:** Normal sinus rhythm, S1, and S2. No rubs, murmur, or gallop. **GASTROINTESTINAL:** Abdomen was soft, benign, and non-distended, non-tender, with no guarding, no rebound, or palpable masses. Bowel sounds were present. Liver and spleen were not palpable. **SKIN:** No significant rashes or ulcers. **EXTREMITIES:** There was mild tenderness to palpation of the lumbar area. No obvious spinal deformity, swelling, or muscle spasm noted. Pedal pulses were 2+ bilaterally. There was no calf tenderness, clubbing, edema, varicose veins, brawny erythema, stasis dermatitis, chronic leg ulcers, no muscle atrophy or joint deformity or enlargement was noted. **BONE AND JOINTS:** The claimant did not use a cane or aid for walking. He had a slight limp on the right side. Tandem walk, heel walk, and toe walk were done without difficulty. He was able to squat to 40% of the distance and recover and bend to 50% of the distance and recover. Grip strength was equal bilaterally. The claimant was right-handed. Gross and fine dexterity appeared bilaterally intact. Abduction of the shoulders was 0-150. Flexion of the knees was 0-150. Straight leg raising test while lying was 0-50, while sitting was 0-90. **NEUROLOGIC:** The claimant was alert, awake, and oriented to person, place, and time. Cranial nerve II—vision as stated in vital signs. III, IV, and VI—no ptosis or nystagmus. **PERRLA:** Pupils were 2 mm bilaterally. V—no facial numbness. Symmetrical response to stimuli. VII—symmetrical face movement noted. VIII—could hear normal conversation in whispered voice. IX and X –swallowing was intact. Gag reflexes intact. Uvula was midline. XI—head and shoulder movement against resistance were equal. XII—no sign of tongue atrophy. No deviation with protrusion of tongue. Sensory functions were intact to sharp and dull gross testing. Motor exam revealed fair muscle tone without flaccidity, spasticity, or paralysis. Cerebellar—finger-to-nose was done very well. The

impression was hypertension which was under good control on medication and a herniated disc for which surgery has been recommended. He continues to have chronic back pain. The medical source statement indicated that based upon the exam claimant was able to occasionally lift and carry 10-15 pounds. He was able to stand or walk about 2-4 hours in an eight-hour workday. The claimant was able to sit about six hours in an eight-hour day and he was able to do simple grasping, reaching, pushing/pulling, and fine manipulation. The claimant was able to operate foot and leg controls occasionally (pp. 4-5).

A Medical Examination Report of [REDACTED] indicates that claimant's condition was stable and that he could sit less than six hours in an eight-hour day and could stand or walk less than two hours in an eight-hour workday and that he had lumbar spine desiccation and tear and could occasionally lift less than 10 pounds (pp. 16-17).

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 his back and does have a desiccated disc in the lumbar spine. The medical source opinion opines that claimant could probably perform light work even with his impairments. The clinical impression is that claimant is stable. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, 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.

Claimant did not state that he had any mental impairment and has not alleged any mental impairment. There is no evidence in the record indicating claimant suffers mental limitations. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. For these reasons, the 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 construction as a cement finisher which does require some strenuous physical exertion. Therefore, claimant could probably perform his past work even with his impairments; however, this Administrative Law Judge will 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 at least sedentary work even with his impairments.

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 did testify that he does receive some temporary relief from his pain medication. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity. Claimant is disqualified from receiving disability at Step 5 based upon the fact that he has not established by objective medical evidence that he cannot perform light or sedentary work even with his impairments. Under the Medical-Vocational guidelines, a younger individual, with a 9th grade education and a semi-unskilled work history who is limited to light work is not considered disabled pursuant to Medical-Vocational Rule 202.18 and 202.20. Retroactive MA-P was considered in this case and is also denied.

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: September 18, 2009

Date Mailed: September 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

cc:

