

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: 2009-24649

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

July 29, 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 29, 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 December 22, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) The department caseworker sent claimant a DHS-3503, Verification Checklist, with information due back to the department which was not returned to the department.

(3) On March 25, 2009, the department caseworker sent claimant notice that his application was denied for failure to provide verification information.

(4) On March 25, 2009, claimant filed a second Medical Assistance and State Disability Assistance application as well as a retroactive Medical Assistance application to December 2008.

(5) On March 25, 2009, claimant filed a request for a hearing on the first application.

(6) There was an open enrollment for the Adult Medical Program in March 2009.

(7) On April 22, 2009, the Medical Review Team (MRT) denied claimant's application stating that claimant could perform other work.

(8) On April 28, 2009, the department caseworker sent claimant notice that his second application was denied. The two applications are herein consolidated.

(9) On June 16, 2009, the State Hearing Review Team again denied claimant's application stating that claimant's impairments lacked duration per 20 CFR 416.909.

(10) Claimant is a 41-year-old man whose birth date is [REDACTED]. Claimant is 5' 4" tall and weighs 125 pounds. Claimant recently gained 30 pounds. Claimant has a GED and one year of college in computers. Claimant is able to read and write and does have basic math skills.

(11) Claimant last worked September 2008 as a janitor for one month before he got sick. Claimant has worked many temporary jobs from 1989 to 2008. Claimant has worked as a machine operator, warehouse worker, packing boxes, and a metal worker.

(12) Claimant is receiving Food Assistance Program benefits and the Adult Medical Program.

(13) Claimant alleges as disabling impairments: sarcoidosis, hypertension, vertigo, hearing loss in the right ear, sight problems, right-sided weakness, a brain stroke, as well as depression.

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

The objective medical evidence on the record indicates that claimant was admitted on

██████████ with right-sided weakness. He was on a baseline dose of prednisone 60

milligrams daily for his neurosarcoidosis. He ran out of his medications for approximately one week and began having nausea and come into the hospital. His MRIs that were done revealed no acute changes. He was started on IV Solu-Medrol for which he was placed on for 72 hours and was seen by physical therapy and occupational throughout his stay. After a high dose of IV Solu-Medrol, the claimant did feel better and on the third day he had GERD symptoms which were relieved with a proton pump inhibitor that has been prescribed for him but he can't afford it because he does not have medical insurance. He was switched to oral prednisone on [REDACTED] [REDACTED] (Page 9) Vital signs on [REDACTED] indicated that his temperature was 97.5, blood pressure 122/73, pulse 83, respirations 18, oxygen saturation 96%. The claimant was awake, alert, and oriented to person, place, time, and situation. Speech was normal and he was not dysarthric. Pupils were symmetric, with mydriasis, and reactive to light. There were some saccades. Face was symmetric. Hearing was diminished on the right side. Tongue was in the midline. In the motor examination there was no pronator drift. Strength was -5/5 in the upper extremities. Lower extremity strength was diminished on the right side and reflexes were brisk in the lower extremities. Plantar response was flexor bilaterally. No sensory level. Gait was normal; he drags the right lower extremity. Claimant was diagnosed with hypertension and exacerbation of neurosarcoidosis. (Page 11)

On [REDACTED], claimant presented at the hospital with lower extremity weakness. On physical examination his blood pressure was 125/83, pulse was 86, respiratory rate was 20, temperature was 98.1, and his O2 saturation was 98% on room air. The claimant was normal was normocephalic, atraumatic. Pupils were equal, round, and reactive to light. Extraocular motion was intact. Nares were patent. Trachea was midline. The neck was supple with no lymphadenopathy in anterior and posterior cervical chains. No carotid bruits were auscultated.

The chest was clear to auscultation bilaterally, no rhonchi, rales, or wheezes were appreciated. Rate and rhythm of the heart with no murmurs, rubs, or gallops appreciated. The abdomen was soft, non-tender, and non-distended with positive bowel sounds. No rebound or guarding noted. In the extremities there were positive peripheral pulses and there was no edema, clubbing, or cyanosis noted. In the neurological area the claimant was alert and oriented x3. Cranial nerves II-XII were grossly intact. (Pages 19-20) The objective medical information in the file indicates that claimant has had sarcoidosis and vitiligo since at least [REDACTED]. (P. 23) Claimant also suffers from episodes of dizziness and ataxia.

On [REDACTED], claimant presented with right lower extremity weakness and was admitted. His weakness resolved with a higher dose of steroids. He did undergo an MRI which was non-diagnostic. He was seen by rheumatology who recommended outpatient methotrexate, but as the claimant will not receive that secondary to his history of noncompliance. Of note, claimant stated that he was supposed to be taking 40 milligrams of prednisone daily and he stopped it on his own and this is when his weakness began. (Page 31)

A Medical Examination Report dated [REDACTED] indicates that claimant has vitiligo, has cachectic, and that he had tinnitus and loss of hearing in the right ear as well as vertigo. His respiratory and cardiovascular systems were normal. The clinical impression was that claimant's condition was stable and that he could never lift any weight and could stand or walk less than two hours in an eight-hour day and could sit less than six hours in an eight-hour day. He could not use his upper extremities for doing simple grasping, reaching, pushing/pulling, and fine manipulating and could not use foot and leg controls for either feet or legs based upon generalized weakness and severe vertigo. Claimant had no mental limitations. (Pages 48-49)

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 abdomen as well as pressure in the center of his body and right-sided weakness; however, there are laboratory or x-ray findings listed on the DHS-49. 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, the objective medical information in the file indicates that claimant has no restrictions from tasks associated with occupational functioning based upon 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. The objective medical evidence in the record also indicates that claimant has, on several occasions, not been compliant with his medication. Claimant did testify on the record that he couldn't afford his medication and there was some question as to whether or not the Adult Medical Program was considered for claimant's benefit. The department is ORDERED to determine whether or not claimant is eligible for the Adult Medical Program for the open enrollment period of March 2009 forward.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers mental limitations resulting from his reportedly depressed state. There is no mental residual functional capacity assessment in the record. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental illness or 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 work. Claimant could probably work as a janitor 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. The claimant's testimony as to his limitations indicates that he should be able to perform light or sedentary work.

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's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to claimant's ability to perform work. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity. Claimant is disqualified from receiving disability at Step 5 based upon the fact that he has not established by objective medical evidence that he cannot perform light or sedentary work even with his impairments. Under the Medical-Vocational guidelines, a younger individual (age 41), with a more than high school education and an unskilled work history who is limited to light 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.

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 9, 2009

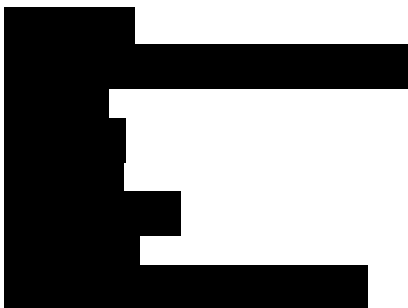
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NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration 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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