

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: 2009-25103

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

August 6, 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 August 6, 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 March 3, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On April 17, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical-Vocational Rule 202.22.

(3) On April 21, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On April 27, 2009, the claimant filed a request for a hearing to contest the department's negative action.

(5) On June 18, 2009, the State Hearing Review Team again denied claimant's application stating that claimant's impairment lacks duration per 20 CFR 416.909 and commented that the medical evidence submitted for review indicates that claimant's condition has improved with treatment and is expected to continue to improve and not prevent all work from the date of onset or from the date of surgery.

(6) The hearing was held on August 6, 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 September 23, 2009.

(8) On September 25, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing past work per 20 CFR 416.920, based upon the fact that claimant has 13 years of education and a work history as a teacher assistant which is light work as performed in the national economy.

(9) Claimant is a 48-year-old man whose birth date is [REDACTED]. Claimant is 5' 9" tall and weighs 206 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills.

(10) Claimant last worked in 2007 for the [REDACTED] as a special education assistant where he stated that he had to lift and change disabled students.

(11) Claimant was fired from his position and receives unemployment compensation benefits in the form of [REDACTED] every two weeks.

(12) Claimant alleges as disabling impairments: a permanent pacemaker, coronary artery disease, hypertension, cataracts, heart attack in [REDACTED], diabetes mellitus, and dizziness. Claimant did not allege a 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 2007. However, unemployment compensation rules indicate that an individual must be available for and seeking full-time employment. The person must be monetarily eligible, totally or partially unemployed, and must have an approvable job separation. The person must be physically and mentally able to work, being available for and seeking work, and filing a weekly claim for benefits on a timely basis. This Administrative Law Judge finds that claimant is currently receiving unemployment compensation benefits which means he is holding himself out as available for and seeking working and being physically and mentally able to work. Therefore, claimant is disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a Physical Residual Functional Capacity Assessment indicates that claimant can occasionally lift twenty pounds, frequently lift ten pounds, and stand about six hours in an eight-hour workday and sit about six hours in an eight-hour workday, and has an unlimited ability to push and/or pull including the operation of hand and/or foot controls. Claimant has no postural limitations and no manipulative limitations and no visual limitations. Claimant had no communicative limitations and no environmental limitations. (pp. 2-6 of the new information as filled out by [REDACTED] on [REDACTED])

A Medical Examination Report dated [REDACTED] indicates that claimant was normal in all areas of examination except for the respiratory. The clinical impression was that claimant was stable. Claimant could occasionally lift twenty pounds or less, but never lift twenty-five pounds or more and could stand and/or walk less than two hours in an eight-hour day. Claimant could reach, push/pull, and fine manipulate with neither upper extremity but could

do simple grasping with both upper extremities and could operate foot and leg controls with both lower extremities. Claimant had no mental limitations.

On [REDACTED], claimant was fitted with a successful dual-chamber pacemaker implant and venogram performed due to difficulty obtaining access revealed patent left axillary and left subclavian veins. On physical examination, claimant had heart-block and symptomatic bradycardia. On [REDACTED], claimant had a blood pressure of 119-151 systolic over 68-87 diastolic, heart rate was 63, respiratory rate was 16-18, and temperature was 97.6. Claimant was alert and oriented x3. Cranial nerves III through XI were grossly intact. He had multiple missing teeth. His neck was supple with no thyromegaly, no JVD, and no bruits. His lungs were clear to auscultation anteriorly and posteriorly. His heart had regular S1 and S2. Telemetry he is ventricularly paced with a heart rate of 63. His transvenous pacemaker is currently set at 63. In his abdomen, bowel sounds were positive in all four quadrants, soft and flat. No masses and no tenderness. His genitalia were not assessed. In his extremities the right groin site was soft, no hematoma, left groin had a transvenous pacemaker sheath. There was no drainage from the site. The area was soft surrounding the sheath. In the extremities there was no edema, 2+ pedal pulses and his extremities were strong with resistance. There were no rashes or lesions. White blood cell count was 5.6, hemoglobin 13.3, hematocrit 39, platelets were 198. (pp. 12-13) On discharge on March 4, 2009, vital signs were temperature 98, pulse 70, blood pressure 128/87, and oxygen saturation 98% on room air. Claimant denied any chest pain, had no palpitations, no difficulty in breathing, no nausea, vomiting, or light headedness.

At Step 2, the objective medical evidence in the record indicates that claimant does have a severe impairment or combination of impairments which have lasted or will last the durational requirement of 12 months or more. However, since claimant does receive unemployment

compensation benefits, his impairment is not severe enough to keep him from working at any job and therefore, claimant is disqualified at Step 2 because a severely restrictive physical or mental impairment has not kept him from working for a period of 12 months or more. 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 and based upon his receipt of unemployment compensation benefits because he has held himself out to be an individual who is available for and seeking full-time employment and has held himself out to be physically and mentally able to work.

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 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. Although claimant has stated that he cannot perform his past relevant work because he did have to lift and change disabled special education students. The Dictionary of Occupational Titles indicates that an education assistant performs any combination of following instructional tasks in classrooms to assist teaching staff of public and private elementary or secondary schools; discusses assigned teaching area with classroom teacher to coordinate instructional efforts; prepares lesson outline and plan in assigned area and submits outline to teacher for review; plans, prepares, and develops various teaching aids, such as bibliography, charts, and graphs; presents subject matter to students, utilizing a variety of methods and techniques such as lecture, discussion, and supervised role playing; prepares and administers and grades examinations; assists student, individually or in groups with lesson assignments to present or reinforce learning concepts;

confers with parents on progress of students; may specialize in a single subject area; may be required to have complete assessment by a number of college education credits. This

Administrative Law Judge will not disqualify claimant at Step 4, based upon his testimony that he had to do heavy lifting and changing of disabled special education students.

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 testified on the record that he does cook one to two times per week and he usually cooks things like salad or things in the microwave. Claimant testified that he does clean the sink and do laundry and that he plays cards for a hobby. Claimant testified that he can walk one block, stand for ten to fifteen minutes at a time, and sit all the time. Claimant is able to bend at the waist, but not squat because he gets dizzy. Claimant is able to shower and dress himself, but not tie his shoes or touch his toes. Claimant testified that the heaviest weight he can carry is thirty pounds and on a repetitive basis he can carry ten pounds. Claimant testified that he stopped smoking and drinking alcohol when he had his heart attack in [REDACTED]. Claimant testified that in a typical day he gets up and checks his sugar, then eats cereal, and washes up, takes his pills, and sits in the living room, eats lunch, and walks around the house.

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 doesn't have any pain and he only gets pain when he is

reaching. Therefore, 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/closely approaching advanced age, 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 202.22.

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 claimant is disqualified from receiving disability based upon his receipt of unemployment compensation benefits. The claimant is disqualified from receiving disability at Step 1, Step 2, and Step 3. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.

/s/  
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Landis Y. Lain  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: January 4, 2010

Date Mailed: January 4, 2010

**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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