

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: 2009-25857
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 5, 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 5, 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 13, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On March 20, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On April 6, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On April 30, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On June 25, 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 202.13 and commended 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 closely approaching advanced age with a high school education, MA-P is denied using Vocational Rule 202.13 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 52-year-old man whose birth date is [REDACTED]. Claimant is 5' 7" tall and weighs 165 pounds. Claimant is a high school graduate and has a few college credits. Claimant is able to read and write and does have basic math skills.

(7) Claimant last worked September 2008 as a construction laborer. Claimant has also worked as a pizza maker.

(8) Claimant alleges as disabling impairments: degenerative joint disease, depression, seizures, knee swelling, and torn rotator cuff on the right arm.

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

The objective medical evidence on the record indicates that on [REDACTED], on physical examination, the claimant was a well-built, well-nourished, African American male who was not in any acute distress. He was 5' 7" tall and weighed 166 pounds and his blood pressure was 130/90. Respirations were 16 per minute and vision with glasses was 20/40 on the right and

20/40 on the left. HEENT: Normocephalic/atraumatic. Eyes had no exophthalmos, icterus, conjunctival erythema or exudate noted. Ears had no discharge in the external canals. Nose showed mild septal deformity without epistaxis or rhinorrhea. In the mouth, the teeth were in fair repair. Neck was supple without JVD, tracheal deviation, lymphadenopathy, or accessory muscle usage. Thyroid was not visible or palpable. In the respiratory system, the chest was symmetrical and equal to expansion. Lung fields were clear to percussion and auscultation bilaterally with no wheezing audible. No cough, accessory muscle usage, retractions, or cyanosis were noted. In the cardiovascular system there was regular rhythm, S1 and S2 with no S3, S4, or murmur audible. The abdomen was soft and non-tender. Bowel sounds were present. Liver and spleen were not palpable. The skin showed no significant skin lesions. In the extremities there was no tenderness in the lumbosacral spine. No obvious spinal deformities, swelling, or muscle spasm were noted. Pedal pulses were 2+ bilaterally. No calf tenderness, edema, clubbing, varicose veins, brawny edema, stasis dermatitis, chronic leg ulcers, muscle atrophy, joint deformity, or enlargement were noted. Claimant had a severe restriction of range of motion of the right shoulder and he was unable to raise his right arm above the chest area. He was able to touch his toes without any problems. He was able to get up from the chair and table without assistance. No paravertebral spasm was noted. No muscle wasting or deformity of the spine was noted. Deep tendon reflexes were within normal limits in the upper and lower extremities. Straight leg raising was negative to 90 degrees bilaterally and Patrick's was bilaterally negative as well. Heel walk, toe walk, tandem walk, Romberg, finger-to-nose testing, squatting and recovery from squatting, were all fairly well done. Gross and fine dexterity appeared bilaterally intact. In the nervous system, the claimant was alert and oriented. The speech was normal. Higher functions were normal. Memory was good. Cranial nerves II-XII were within normal limits. In the motor system, power and tone

were normal. There were no atrophic changes noted. There was no abnormal movement noted. There was no muscle weakness or paralyzes noted at the time of the examination. Touch, pinprick and vibration sensations were normal. The deep tendon reflexes were 2+ bilaterally in the upper and lower extremities. Cerebellar function was normal. Heel-to-knee and finger-to-nose testing was normal. The Romberg test was positive. Gait was slow, but normal. The assessment was that claimant had chronic right shoulder pain and need to rule out rotator cuff tear and he had a seizure disorder which has been untreated, as well as depression. (Pages 24-25)

A Medical Examination Report in the file indicates that claimant was normal in all areas of examination except for range of motion in the right shoulder and had some popping and pain. (Page 7) The report indicates that the clinical impression was that claimant is deteriorating and that he can stand or walk about six hours in an eight-hour workday and sit about six hours in an eight-hour workday. Claimant could occasionally lift less than 10 pounds and never lift 10 pounds or over. He was able to do simple grasping and fine manipulating with both upper extremities but able to do reaching and pushing/pulling with the left upper extremity only and could operate foot and leg controls with both feet and legs. (Pages 7-7A)

Another Medical Examination Report dated [REDACTED] indicates that claimant was normal in all areas of examination except that he had recent onset seizures and severe range of motion problems on the right shoulder and pain. Claimant was 5' 8" tall and 165 pounds. His blood pressure was 90/62 and he was right-hand dominant and his visual acuity best corrected was 20/20 in the right eye and 20/20 in the left eye. He was diagnosed with degenerative joint disease of the shoulder and chronic rotator cuff injury. The clinical impression was that claimant was stable and that he could stand or walk at least two hours in an eight-hour workday and sit about six hours in an eight-hour workday. Claimant could occasionally lift 10 pounds or less and

could frequently lift less than 10 pounds, but never lift 20 pounds or more. Claimant could use both upper extremities for simple grasping and fine manipulating, but could use only the left for reaching and pushing/pulling and could operate foot and leg controls with both feet and legs.

(Pages 4-4A)

A letter from claimant's doctor dated [REDACTED] indicates that claimant, on physical exam, was alert and oriented. His heart was regular. His lungs were clear. Vitals were stable. Right shoulder demonstrated a tremendous amount of crepitance with passive range of motion, particularly over the rotator cuff and upper scapular areas. He was in pain with movement. The impression was chronic right shoulder internal derangement with possible rotator cuff tear and/or arthritis. Claimant was also prescribed Lexapro 10 mg per day for depression secondary to his inability to work and right shoulder pain. (Page 30)

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 shoulder which is supported by clinical findings that claimant does have severe crepitance of his right shoulder and a possible rotator cuff tear. However, the Medical Needs form in the file indicates that claimant could work at any job, but cannot work at a job where he needs to lift his right arm because he needs shoulder repair. (Page 8) There is one Medical Examination Report which indicates that claimant's condition is deteriorating; however, the only finding made is that claimant experiences pain and range of motion problems with his right shoulder. There is no medical finding that claimant has any other muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, the Medical

Examination Report has restricted claimant 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. 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.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers mental limitations resulting from his reportedly depressed state.

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 no mental residual functional capacity assessment in the record. The assessment by claimant's doctor is that he was oriented to time, person, and place. The claimant was able to answer all the questions at the hearing and was responsive to the questions. Claimant was able to

represent himself and was oriented to time, person, and place during the hearing. For these reasons, this Administrative Law Judge finds that claimant has failed to meet his burden of proof at Step 2. Claimant must be denied benefits at this step based upon his failure to meet the evidentiary burden.

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

If claimant had not already been denied at Step 2, this Administrative Law Judge would have to deny him again at Step 4 based upon his ability to perform his past relevant work. Claimant's past relevant work was as a pizza maker. This Administrative Law Judge finds that pizza making does not require strenuous physical exertion and 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 testified on the record that he can walk one block, stand for a half an hour and can sit with no limits. Claimant is able to squat, bend at the waist, tie his shoes, touch his toes, and shower and dress himself even though he did state that he has some problems with the showering and dressing himself because of his inability to raise his right arm. Claimant testified that he can carry 3-4 pounds and that he is right-handed and that his hands and arms are fine except that his right arm hurts from the shoulder down. Claimant testified that his level of pain on a scale from 1 to 10

without medication is an 8 and with medication is a 7/7.5. Claimant testified that he does have a driver's license but usually friends take him places or he rides the bus. Claimant testified that he does microwave food and that he grocery shops one time per week and needs help with carrying heavy things. Claimant testified that he does dishes and does the laundry and that his hobbies are reading and music.

Claimant's activities of daily living do not appear to be very limited and he should be able to perform light or sedentary work even with his impairments. Claimant has failed to provide the necessary objective medical evidence to establish that he has a severe impairment or combination of impairments which prevent him from performing any level of work for a period of 12 months.

There is insufficient 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. Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to claimant's ability to perform work. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity. Claimant is disqualified from receiving disability at Step 5 based upon the fact that he has not established by objective medical evidence that he cannot perform light or sedentary work even with his impairments.

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. PEM, Item 261, page 1. Because the claimant does not meet the definition of disabled

under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance, 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 11, 2009

Date Mailed: September 11, 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.

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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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