

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: 2009-25865
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 25, 2009
Genesee 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, an in-person hearing was held on August 25, 2009. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly determine that claimant was no longer disabled for purposes of 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) Claimant was approved for retroactive Medical Assistance and Medical Assistance benefits from November 2007 through January 2009 by the Medical Review Team with a medical review requested in January 2009.

(2) On March 16, 2009, claimant filed a review application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On March 16, 2009, the Medical Review Team denied claimant's application stating that claimant had medical improvement.

(3) On March 18, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On May 1, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On June 24, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work based upon medical improvement and is capable of performing sedentary work per 20 CFR 416.967(a), light work per 20 CFR 416.967(b), medium work per 20 CFR 416.927(c) and unskilled work per 20 CFR 416.968(a).

(6) Claimant is a 37-year-old man whose birth date is [REDACTED]. Claimant is 5' 7" tall and weighs 280 pounds. Claimant attended the 12th grade and has a GED.

(7) Claimant last worked in 2007 working as a construction laborer. Claimant has also worked in the auto detailing business cleaning cars, at [REDACTED] as a cook, and at [REDACTED] grocery as a bagger.

(8) Claimant received Food Assistance Program benefits and the Adult Medical Program.

(9) Claimant alleges as disabling impairments: a closed head injury, depression, hypertension, obesity, memory loss, and problems with concentration and focus.

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

The objective medical evidence on the record indicates that a psychology report of [REDACTED] indicates that when asked about his current goals, claimant wanted to get all of his fines paid off, get a steady, good job and get all of his ducks in a row and be well established. He hoped that he would be able to return to work and does have medical clearance for such a return with some job applications already submitted. Claimant spent 90 days at [REDACTED] in [REDACTED] in conjunction with his most recent drinking and driving arrest. His sensorium and mental capacity results were as follows: orientation responses were the [REDACTED] [REDACTED] Monday at I'd say 3:30 p.m. He gave his full name and stated that he was in a doctor's office. On memory tasks, claimant repeated five numbers forward and three numbers backward and recalled two of three objects three minutes later. The past few presidents were; it's going to Obama, Bush, Clinton, the other Bush, Ronald Reagan, and Carter. His date of birth was given as [REDACTED]. Five large cities were Dallas, Texas; Los Angeles, California; Tampa Bay, Florida; Cincinnati,

Ohio; and Detroit, Michigan. Current famous people were Elvis Presley, Barack Obama, and Michael Jackson. On calculation tasks, $100-7=93$, 84, 77, 70, and 63. $2+3=5$, $7+9=16$, $3 \times 8=24$, and $7 \times 9=63$. In abstract thinking, the grass is greener on the other side of the fence was interpreted to mean the other way is better—a metaphor and don't cry over spilled milk was interpreted to mean there ain't no sense crying over something that's done—it's wasted—just forget about it. A bush and a tree were alike in that both has leaves and draw water out of the ground to survive and different in that the tree has branches and grows a lot taller. On judgment questions claimant would take a stamped addressed envelope to the post office and would mail it and would look for a fire alarm or yell fire if he discovered a fire in a theater. He diagnosed with adjustment reaction with anxious mood secondary to history of head injury and job loss and history of alcoholism and drug dependency. (pp. 96-97)

A [REDACTED] medical assessment in the case stated that on physical examination, claimant was a 36-year-old morbidly obese white male. Weight was 291 pounds. Height was 5' 8" tall. Blood was 130/80 in the left arm in a sitting position. Temperature was normal. Respirations were 14. Pulse was 88 per minute, regular, good volume. He was alert and cooperative. He was very pleasant. He moved quite easily from the chair to the examining table. Snellen was 20/20 in the right eye, 20/20 in the left eye. Color was within normal limits. No signs of cyanosis, clubbing, jaundice, or anemia. HEENT: normocephalic. Pupils were equal, round, and reactive to light and accommodation. Extraocular muscles were intact. Funduscopy was benign. Throat was noninjected. Neck was supple. No evidence of lymphadenopathy or thyromegaly. Carotids were bilaterally palpable with no bruit. The chest was normal in contour and configuration. Expansion was good. Percussion was resonant. Breath sounds were vesicular. The heart, there was no parasternal heave or thrill felt. Heart sounds 1 and 2 were heard. No

gallop or murmur. No JVD. No edema. The abdomen was soft. Bowel sounds were present and normal, obese, and non-tender to deep palpation. The rectal and GU exams were deferred. CNS: Cranial nerves II-XII were intact. CNS examination was grossly within normal limits. Claimant had a normal gait. He was not using any accessory device such as a cane. He moved quite easily from the chair to the examining table. (pp. 94-95)

A Medical Examination Report dated [REDACTED] indicates that claimant could frequently lift 20 pounds, 10 pounds or less, and less than 10 pounds, and could never lift 50 pounds or more, and he can occasionally lift 25 pounds. The clinical impression was that claimant was stable and that he could stand or walk at least two hours in an eight-hour day. There were no assistive devices medically needed or required for ambulation and he could use both upper extremities for simple grasping, reaching, pushing/pulling, and fine manipulating. He could use both feet and legs for operating foot and leg controls. Claimant had no mental limitations and he was normal in all areas of examination. He was 5' 8" tall and weighed 280 pounds. His blood pressure was 130/70. He was right-hand dominant and his visual acuity best corrected was 20/25 in the right eye and 20/20 in the left eye. (pp. 66-67)

Once an individual has been determined to be "disabled" for purposes of disability benefits, continued entitlement to benefits must be periodically reviewed. In evaluating whether an individual's disability continues, 20 CFR 416.994 requires the trier of fact to follow a sequential evaluation process by which current work activities, severity of impairment(s), and the possibility of medical improvement and its relationship to the individual's ability to work are assessed. Review may cease and benefits may be continued at any point if there is substantial evidence to find that the individual is unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5).

First, the trier of fact must determine if the individual is working and if work is substantial gainful activity. 20 CFR 416.994(b)(5)(i). In this case, the claimant is not engaged in substantial gainful activity and has not worked since 2007.

Secondly, if the individual has an impairment or combination of impairments which meet or equal the severity of an impairment listed in Appendix 1 to Subpart P of Part 404 of Chapter 20, disability is found to continue. 20 CFR 416.994(b)(5)(ii).

In this case, claimant does not have an impairment or combination of impairments which meet or equal the severity of any impairment listed in Appendix 1.

In the third step of the sequential evaluation, the trier of fact must determine whether there has been medical improvement as defined in 20 CFR 416.994(b)(1)(i).

20 CFR 416.994(b)(5)(iii). Medical improvement is defined as any decrease in the medical severity of the impairment(s) which was present at the time of the most recent favorable medical decision that the claimant was disabled or continues to be disabled. A determination that there has been a decrease in medical severity must be based on changes (improvement) in the symptoms, signs, and/or laboratory findings associated with claimant's impairment(s). If there has been medical improvement as shown by a decrease in medical severity, the trier of fact must proceed to Step 4 (which examines whether the medical improvement is related to the claimant's ability to do work). If there has been no decrease in medical severity and thus no medical improvement, the trier of fact moves to Step 5 in the sequential evaluation process.

In this case, claimant does have medical improvement which relates to his ability to perform work.

In the fifth step of the sequential evaluation, the trier of fact must consider whether any of the exceptions in 20 CFR 416.994(b)(3) and (b)(4) apply. If none of them apply, claimant's disability must be found to continue. 20 CFR 416.994(b)(5)(v).

The first group of exceptions to medical improvement (i.e., when disability can be found to have ended even though medical improvement has not occurred), found in 20 CFR 416.994(b)(3), are as follows:

- (1) Substantial evidence shows that the claimant is the beneficiary of advances in medical or vocational therapy or technology (related to claimant's ability to work).
- (2) Substantial evidence shows that the claimant has undergone vocational therapy (related to claimant's ability to work).
- (3) Substantial evidence shows that based on new or improved diagnostic or evaluative techniques, claimant's impairment(s) is not as disabling as it was considered to be at the time of the most recent favorable medical decision.
- (4) Substantial evidence demonstrates that any prior disability decision was in error.

In examining the record, this Administrative Law Judge finds that the medical exceptions do not apply.

The second group of exceptions is medical improvement, found at 20 CFR 416.994(b)(4), are as follows:

- (1) A prior determination was fraudulently obtained.
- (2) Claimant did not cooperate.
- (3) Claimant cannot be located.
- (4) Claimant failed to follow prescribed treatment which would be expected to restore claimant's ability to engage in substantial gainful activity.

After careful review of the record, this Administrative Law Judge finds that the second group of medical exceptions does not apply in this case.

In Step 4 of the sequential evaluation, the trier of fact must determine whether medical improvement is related to claimant's ability to do work in accordance with 20 CFR 416.994(b)(1)(i) through (b)(1)(iv). 20 CFR 416.994(b)(5)(iv). It is the finding of this Administrative Law Judge, after careful review of the record, that there has been an increase in claimant's residual functional capacity based on the impairment that was present at the time of the most favorable medical determination. It should be noted that claimant has a basically normal mental status examination as well as physical examination.

Thus, this Administrative Law Judge finds that claimant's medical improvement is related to claimant's ability to do work. If there is a finding of medical improvement related to claimant's ability to perform work, the trier of fact is to move to Step 6 in the sequential evaluation process.

In the sixth step of the sequential evaluation, the trier of fact is to determine whether the claimant's current impairment(s) is severe per 20 CFR 416.921. 20 CFR 416.994(b)(5)(vi). If the residual functional capacity assessment reveals significant limitations upon a claimant's ability to engage in basic work activities, the trier of fact moves to Step 7 in the sequential evaluation process. In this case, there are no significant limitations upon claimant's ability to engage in basic work activities.

In the instant case, claimant stated that he calls dial-a-ride when he needs a ride because he hasn't paid a ticket on his driver's license. Claimant does cook 1-2 times per day and he microwaves, grills cheese, and eats soup. Claimant testified that he does grocery shop 1-2 times per month and his family helps him with transportation and sometimes picking up the groceries. Claimant testified that he does wipe off the table. Claimant testified that he can walk a half a mile,

stand for 20-30 minutes, and has no limits on his ability to sit but he usually can sit for about a hour before he has to move. Claimant testified that he can shower and dress himself, squat, bend at the waist, tie his shoes, and touch his toes and that his back and knees are fine. Claimant testified that he can carry 25 pounds and that he is right-handed and that his legs and feet and hands and arms are fine. Claimant testified that he has no pain. Claimant testified that in a typical day he gets up, eats cereal, brushes his teeth and takes care of his hygiene and then he goes for a walk. He talks care of his laundry and watches television about two hours per day but can't really do anything strenuous. Claimant testified that he could drive a vehicle for a job.

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).

In the final step, Step 8, of the sequential evaluation, the trier of fact is to consider whether the claimant can do any other work, given the claimant's residual function capacity and claimant's age, education, and past work experience. 20 CFR 416.994(b)(5)(viii). In this case, this Administrative Law Judge finds that claimant does retain the residual functional capacity to perform at least light or sedentary work even with his impairments.

Under the Medical-Vocational guidelines a younger individual, age 37, with a 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 by the necessary, competent, material, and substantial evidence that it was acting in compliance with department policy when it denied claimant's review application for Medical Assistance and State Disability Assistance benefits. Claimant does have medical improvement and 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: October 23, 2009

Date Mailed: October 23, 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:

