

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: 2009-2589
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
December 10, 2008
Calhoun 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 December 10, 2008. 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 August 11, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On September 22, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On September 24, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On October 2, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On October 29, 2008, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the claimant had a hernia and had lifting restrictions for one week post surgery. The claimant has a history of lumbar laminectomy in [REDACTED]. A MRI in [REDACTED] showed no recurrent or chronic herniated disc or spinal stenosis. He did have post operative changes and degenerative changes. On exam he has a normal gait and no evidence of neurological abnormalities. The claimant should avoid heavy lifting. 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 medium work. In lieu of detailed work history, the claimant will be returned to other work. Therefore, based on the claimant's vocational profile of a younger individual, 12th grade education and history of unskilled and semi-skilled work, MA-P is denied using Vocational Rule 203.28 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days.

(6) The hearing was held on December 10, 2008. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(7) Claimant submitted additional medical information and on January 29, 2009 it was sent to the State Hearing Review Team for further review.

(8) On January 27, 2009, the State Hearing Review Team again denied claimant's application stating that claimant was capable of performing other work in the form of medium work per 20 CFR 416.967(c) pursuant to Medical-Vocational Rule 203.28.

(9) Claimant is a 40-year-old man whose birth date is [REDACTED]. Claimant is 5' 10" tall and weighs 194 pounds. Claimant attended one and a half years of college and studied law enforcement. Claimant is able to read and write and does have basic math skills.

(10) Claimant last worked December 2004 for the [REDACTED] as a mechanic. Claimant testified that he also worked as a heavy equipment operator, as a farmer and as a [REDACTED] operator.

(11) Claimant alleges as disabling impairments: lumbar radiculitis, back problems, back surgery in [REDACTED], nerve damage to L5, two crushed discs in [REDACTED] from a motor vehicle accident and a numb big toe.

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 2004. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that in [REDACTED] the claimant was noted to have a right inguinal hernia. He was placed on a weight lifting restriction of nothing greater than ten pounds for one week post operatively (Page 80). A MRI of the lumbar spine dated [REDACTED] showed post operative and degenerative changes but no definite evidence for recurrent or chronic herniated disc or spinal stenosis (Pages 78 through 79).

On [REDACTED], the claimant had a normal gait (Page 111). Straight leg raise was positive on the right at 30 degrees. Motor bulk, contour and tone were normal. Strength was normal at 5/5 in the left and right lower extremity. There was no impairment of tandem walking or walking on toes or on heels. He had no paraspinal muscle spasm (Page 110). In [REDACTED] the claimant reported a nine year history of recurrent back pain. He has a history of lumbar laminectomy in [REDACTED] and his second surgery in [REDACTED] to repair torn tissue. The claimant was 205 pounds (Page 115). Gait was normal. Posture was normal. He had lower lumbar paravertebral muscle tenderness present. Diagnosis was lumbosacral radiculitis (Page 114). A medical service occupational work status report at Page 5 indicates that claimant can work with the following restrictions that his injured area is to be kept clean and dry and that was dated [REDACTED] [REDACTED]. On [REDACTED], from [REDACTED], claimant was 5' 10" tall and weighed 204 pounds. His blood pressure was 122/80 and his pulse was 78 and regular. His MG showed paraspinal muscles changes consistent with lower lumbar radiculopathy/previous

surgery. There was some root irritation at the right. His MRI scan was reviewed and there was no compressive pathology involved in the nerve roots. His dynamic views showed no evidence of abnormal motion. The doctor indicated that claimant's condition would be best managed in physical medicine and rehabilitation (Page 130 new information). The radiology report at Page 134 of the new medical reports indicating that there was a lumbosacral spine of five views and the vertebral bodies were of normal height. There was disc space loss to a mild degree at L3-4 and L4-5. With lateral flexion and extension no abnormal motion is seen.

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. Although claimant does have back problems and has had two back surgeries in [REDACTED], his neurological and medical reports do not indicate that he is unable to work at any job for a period of 12 months or more. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. Claimant has not established that he should be restricted from tasks associated with occupational functioning based on his reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that claimant has met the evidentiary burden can be made. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

Claimant testified on the record that he does not have any mental impairment. There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers mental limitations resulting from his possibly depressed state. There is no mental residual

functional capacity assessment in the record. The evidentiary record is insufficient to find claimant suffers a severely restrictive mental 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. There is insufficient objective medical evidence that claimant cannot perform medium work even with his impairments. Claimant testified on the record that he has a driver's license and does drive two or three times per week to the doctors and to pick up his kids. Claimant testified that he is divorced and lives with his father in a house and that his father supports him. Claimant testified that he cooks one time per day and cooks things like steak, mac and cheese and hotdogs. Claimant testified that he does grocery shop one to two times per week with no help. Claimant testified that his girlfriend does the dishes and that his hobby is watching football. The claimant testified that he can walk 30 feet sometimes using a cane because his right leg is weak and that he can stand for a half an hour and can sit for an hour on a good day. Claimant testified that he can't squat because he has back and nerve damage but he can bend at the waist and sometimes tie his shoes and shower and dress himself. Claimant testified that he cannot touch his toes. Claimant testified that the heaviest weight he can carry is ten pounds and that he is left handed and that his hands and arms are fine and his right leg is sometimes numb because of nerve damage. Claimant testified that his level of pain on a scale from 1 to 10 without medication is an 11 and with medication is a 6. Claimant testified that he does smoke a pack of

cigarettes every two days and that his doctor has told him to quit and he is trying to quit.

Claimant testified that in a typical day he gets up and takes his medication and eats a bowl of cereal and then stands and tries to do exercises. He gets on the computer and sits in the recliner and watches movies. Claimant testified that his recliner is comfortable.

This Administrative Law Judge finds that claimant has not established that he can no longer perform any of his prior work. Claimant should be able to perform some of his prior work as an equipment operator even with his impairments. Therefore, claimant is also disqualified from receiving disability 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).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

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 medium, 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 medium, light or sedentary work even with his impairments. The claimant's testimony as to his limitations indicates that he should be able to perform at least light or sedentary work.

Claimant did testify that he does continue to smoke despite the fact that his doctor has told him to quit. Claimant is not in compliance with his treatment plan.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial gainful activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

Claimant testified that he doesn't have any mental limitations. 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, the 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 40), 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: March 3, 2009

Date Mailed: March 4, 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

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