

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: 2009-26091
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 20, 2009
Oakland 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 20, 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 October 28, 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 pursuant to Medical-Vocational Rule 202.20.

(3) On March 29, 2009, the department caseworker sent claimant notice that his application was denied.

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

(5) On June 29, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The objective medical evidence presented does not establish a disability at the listing or equivalence level. The collective medical evidence shows that the claimant is capable of performing a wide range of simple, medium, unskilled work. 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, unskilled work. Therefore, based on the claimant's vocational profile of a younger individual, high school graduate and a history of unskilled 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) Claimant is a 24-year-old man whose birth date is [REDACTED]. Claimant is 69" tall and weighs 139 pounds. Claimant is a high school graduate and is able to read and write at the 5th grade level and is able to do basic math at consumer's math level and count money.

(7) Claimant last worked as a landscaper for his father getting tools and laboring and also worked at a greenhouse. Claimant was also an active participant in Michigan Rehabilitation Services through December 2008.

(8) Claimant alleges as disabling impairments: learning disability and nerve problems.

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 as he does not work full-time for his father; however, he does do some landscaping for his father by doing labor work and getting tools to put on his truck. Therefore, this Administrative Law Judge will not disqualify claimant from disability at Step 1.

The objective medical evidence on the record indicates that the claimant has a normal gait. He has normal range of motion of all joints with normal grip strength. (pp. 13-14) The mental examination noted he was spontaneous. His thoughts were logical and well-organized. He was oriented x3. (pp. 5-11) His full scale intelligence quotient (IQ) was 99, which is average

revealing no mental retardation. (p. 24) According to the claimant, he has a driver's license. (p. 7) At the evaluation of [REDACTED], claimant was oriented to time, person, place, and situation. He was able to repeat five numbers forward and two numbers backward. He was able to remember three of three object three minutes later. Claimant named the past president as George Bush and his birth date as [REDACTED]. Claimant names five large cities as Atlanta, New York, Boston, Detroit, and Orlando and famous people as Michael Jordan and Johnny Depp. Claimant named an event as one about Metro Airport and laying off a lot of people who work for this airline—Delta. It's the one about the mayor of Detroit. In abstract thinking "don't cry over spilled milk" he stated you need to grow up and "the grass is always greener on the other side of the fence" he said you need to do better. Similarities and differences of how are a bush and a tree alike, they are both plants and how are they different, he stated one was smaller and one had a trunk and grows larger and longer. The tree grows longer and larger and the bush is smaller and it goes faster. If he found a stamped addressed envelope he would take it to the post office and if he discovered a fire in a theater he would call 911 on the nearest phone and if it was tamable he would put it out. His diagnosis was a learning disability and his GAF was 60 and there was insufficient information because of the lack of evaluation of his learning disabilities to determine a prognosis.

The Medical Examination Report indicated that claimant does have genetic neuropathy in his upper extremities and legs. (p. 15) The clinical impression was that the claimant was stable but cannot use his upper extremities for anything and can't use his lower extremities for anything and can never lift any weight. (p. 18)

A [REDACTED] neurological evaluation indicated that claimant was awake and alert. He was very pleasant and calm and followed commands. His speech appeared to be fluent.

He did have difficulty with simple arithmetic, serial sevens and threes. He was able to spell “world” forward and backward without difficulty. He remembered three of three objects after five minutes. He was following commands. He was pleasant. On cranial nerve testing II through XII were unremarkable. Motor strength he had 5/5 strength in the upper extremities, slight weakness in the iliopsoas bilaterally 4/5, otherwise the strength was normal. Sensation to pinprick, light touch and temperature was intact. He did have a vibration sense lag of ten seconds in his toes. Reflexes were 1+ throughout. Downgoing toes. Gait and station were normal with normal heel-to-toe and tandem walk. Romberg’s was negative. The physician was unable to fatigue him. (p. 23)

A psych report of [REDACTED] indicates that claimant is not diagnosed with a developmental disorder, meaning he appears not to be substantially impaired in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency. Currently, he needs help in self-care and economic self-sufficiency. Communication, daily living skills, and socialization domains were scored in the above average range of normal adaptive levels. (p. 24)

A Mental Residual Functional Capacity Assessment in the record indicates that claimant is markedly limited only in the areas of the ability to maintain attention and concentration for extended periods, the ability to sustain an ordinary routine without supervision, and the ability to complete a normal workday and worksheet without interruptions from psychologically-based symptoms, and to perform at a consistent pace without an unreasonable number and length of rest periods. He was not significantly limited or moderately limited in any other area. Claimant does better with one-step instructions and becomes overwhelmed when he is given two-step

instructions. He is markedly limited in the ability to set realistic goals or make plans independently of others. He enjoyed working at the nursery because he worked in a group with other employees and had a boss to provide leadership. (pp. 27-28)

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. There is no laboratory or x-ray findings listed on the DHS-49 which indicates that claimant cannot use his hands, feet, or his legs and can lift no weight. The DHS-49, Medical Examination Report, contained in the file is not consistent with the overall medical information contained in the file. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, claimant has stated on the record that he has done some landscaping with his father and has also worked at a nursery. He has restricted himself from tasks associated with occupational functioning based upon his reports of 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.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers mental limitations resulting from his learning disabled condition. The Mental Residual Functional Capacity Assessment in the record does not indicate that claimant is markedly limited in many areas. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. His IQ is 99 which indicate no mental

retardation. 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. Claimant was able to answer all the questions at the hearing and was responsive to the questions. Claimant was oriented to time, person, place, and situation during the hearing. Therefore, he did not have any severe limitations of his mental 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 insufficient objective medical/psychiatric evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job.

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 did testify on the record that he was working with his father doing some landscaping work. There is insufficient objective medical evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work which he is currently engaging in or 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).

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. Claimant testified that he does have a driver's license and does drive but doesn't have a vehicle. Claimant testified that he does cook one time per day and cooks things like tacos, burgers, and pasta. Claimant testified that he does grocery shop every two weeks with no help and that he cleans his home by cleaning his own room, the bathroom, laundry, and doing dishes. Claimant testified that he does do some landscaping and that he can walk a mile, stand for an hour at a time, and has no limits upon his ability to sit. Claimant testified that he is able to shower and dress himself, squat, bend at the waist, tie his shoes, and touch his toes. Claimant testified that he can carry 50 pounds at a time. Claimant testified that he is right-handed and that his hands and arms are fine and his legs and feet are fine and that he has no pain. 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 medium, light, or sedentary work even with his impairments. Under the Medical-Vocational guidelines, a younger individual (age 24), with a high school education and an unskilled work history who is limited to medium 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 established by the necessary, competent, material, and substantial evidence 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 medium, 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 15, 2009

Date Mailed: October 16, 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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