

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: 2009-26578
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 11, 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 11, 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 January 5, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On May 8, 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 May 13, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On May 18, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On June 26, 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 202.20 and commented 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 light work. Therefore, based on the claimant's vocational profile of a younger individual with a high school education, MA-P is denied using Vocational Rule 202.20 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 22-year-old man whose birth date is [REDACTED]. Claimant is 5' 8" tall and weighs 155 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills.

(7) Claimant last worked September 22, 2008 for [REDACTED] cleaning cars. Claimant has also worked handling documents for [REDACTED] on a two-year project.

(8) Claimant alleges as disabling impairments: type I juvenile diabetes, hypertension, depression, anxiety, and renal insufficiency in the form of one working kidney.

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. Claimant did testify that he was fired because of absences because he was sick. Claimant did testify that he was in a diabetic coma [REDACTED] and missed days of work.

The objective medical evidence on the record indicates that claimant was oriented x3 and stated that he knew that he was in a doctor's office. He knew that the time was morning. He knew his birth date, knew the past presidents were Obama, Clinton, and Bush and could not go further. He named big cities as Detroit and Chicago and Kobe Bryant, Lebron James, and Jay Z as famous people. His calculations were $5+4=9$ and $6 \times 7 + 42$. His abstract thinking, "the grass is always greener on the other side of the fence", he stated "I don't know" and "don't cry over spilled milk", he also stated "I don't know". He could not determine how a bush and a tree were alike and different. He was asked what he would do if he found a stamped, addressed envelope in the street and he stated he'd put it in the mailbox. Claimant had no head injury, but he had some seizures in the past, but no medications for that. He was diagnosed with major depressive disorder, recurrent, in partial remission, and a GAF of 65. His prognosis was fair and he would not be able to manage his benefit funds. Claimant had Axis III high blood pressure, renal failure, and diabetes. The general observations were that the claimant was 5' 10" tall and weighed 145 pounds. He was adequately dressed and groomed, but he had decreased eye contact. His gait was slow, but normal. He was in good contact with reality. His insight was fair, relaxed, and pleasant. He had decreased motivation and tendency to minimize symptoms. He was spontaneous, slow, circumstantial, organized, with no pressure of speech. He denied any hallucinations. He denied any paranoia, but he had vague suicidal thoughts off and on in the past, but no plans and no attempts. He sleeps during the daytime, about 8-10 hours and at night 2-4 hours because he has bad dreams. Back pain was his somatic complaint. He was depressed, anxious, friendly, and his affect was blunt. He felt very sick and tired. The psychiatric evaluation was done [REDACTED].

(pp. 6-9)

A physical examination performed [REDACTED] indicates that claimant was a male, age 22, height 5' 10" and weighed 146 pounds. There was no blood pressure or pulse available. Claimant had type I diabetes, but no thyroid disease. In his HEENT particularly on the eyes, fundus showed AV nicking, but sclera was normal. PERLA was normal. Examination of the ears revealed tympanic membranes were okay. Oral cavity and throat was normal. The neck had no mass or bruit. The cardiovascular system showed a regular rhythm, and no murmur or gallop could be heard. Auscultation and percussion of the lungs was normal. In the abdomen he had hepatomegaly, at least four fingers below the right costal margin, most likely due to fatty degeneration. The skin was normal. His pulses were present and there was no edema. Straight leg raising was 90 degrees with no pain. Squatting was 100% and he could get up. His handgrip on both sides was fine. Flexion of the knees did not reveal any pain. Walking tiptoe, tandem gait, and heel walking were fine. He had a long history of depression and has been depressed since he remembers. He has a history of suicidal attempts twice. At this time, he was oriented to time, place, and person. Deep tendon reflexes were absent in the ankles. There was diminution to pinprick sensation to both ankles at the time of examination. Ankle jerks on both sides were absent, but knee jerks were present. Deep tendon reflexes in the upper extremities were present. Romberg sign was negative. Finger-to-nose examination was normal. His diagnosis was type I diabetes, uncontrolled; diabetic neuropathy because of diminution of pinprick sensation up to the ankles and absence of ankle jerks on both sides; and hepatomegaly, due to fatty degeneration of the liver. (pp. 10-12)

A [REDACTED] Medical Examination Report indicates that the claimant had fatigue due to depression and uncontrolled blood sugars.

At Step 3, claimant's impairments do not rise to the level necessary to be specifically listed as disabling as a matter of law.

At Step 4, claimant testified that he is sick a lot and does not feel well a lot because he cannot always take his insulin. The medical records indicate that claimant's diabetes is not under control and that his hypertension is not under control. Therefore, this Administrative Law Judge finds that claimant does not have the present ability to perform his prior work with his impairments.

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).

Although claimant could possibly perform some light work or sedentary work for a short period of time, because his diabetes is uncontrolled and he doesn't have adequate access to medication, and he does have neuropathy, this Administrative Law Judge will find that claimant is presently disabled based upon his combination of impairments in the form of diabetes mellitus, type I, hypertension, depression, anxiety, and renal insufficiency. The department is required to initiate a determination of claimant's financial eligibility for the requested benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant meets the definition of medically disabled under the Medical Assistance program and the State Disability Assistance program as of the January 5, 2009 application date.

Accordingly, the department's decision is REVERSED. The department is ORDERED to initiate a review of the claimant's January 5, 2009 application, if it has not already done so, to determine if all other non-medical eligibility criteria are met. The department shall inform the claimant of its determination in writing.

A medical review shall be conducted in September 2010. At that time, it is ORDERED that the department shall assist claimant in providing updated an endocrinologist's report, an updated nephrologist's report, an internist report, and an updated psychiatric report all in narrative form.

/s/

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

Date Signed: September 18, 2009

Date Mailed: September 18, 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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