

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: 2009-26753

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

August 12, 2009

Midland 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 12, 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 29, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability. That application was denied.

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

(3) On April 28, 2009, the Medical Review Team denied claimant's application stating that claimant's impairments were non-exertional. Claimant was involved with the Michigan Rehabilitation Services at that time.

(4) On May 5, 2009, the department caseworker sent claimant notice that his application was denied.

(5) On May 15, 2009, claimant filed a request for a hearing to contest the department's negative action.

(6) On June 29, 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), unskilled work per 20 CFR 416.968(a) pursuant to Medical-Vocational Rule 202.17. The State Hearing Review Team commented that 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. (Department Exhibit 40)

(7) The hearing was held on August 12, 2009. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(8) Additional medical information was submitted and sent to the State Hearing Review Team on August 13, 2009.

(9) On August 18, 2009, the State Hearing Review Team again denied claimant's application and stated that claimant is capable of performing other work in the form of light work per 20 CFR 416.967(b), unskilled work per 20 CFR 416.968(a) pursuant to Medical-Vocational Rule 202.17 and commented that the new information submitted does not significantly change or alter the previous decision.

(10) Claimant is a 49-year-old man whose birth date is [REDACTED]. Claimant is 5' 3-1/2" tall and weighs 128 pounds. Claimant attended the 10th grade and has no GED and testified that he cannot read and write and cannot do basic math, but can count money in easy amounts.

(11) Claimant alleges as disabling impairments: a bipolar disorder, learning disability, impulse control disorder, anxiety disorder, asthma, and illiteracy, as well as back pain and hearing voices.

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 has worked in a scrap yard and as a janitor. Claimant also was in prison from [REDACTED] where he went to school and from [REDACTED] Claimant is involved in the Michigan Rehabilitation Services and has been receiving [REDACTED] per month in State Disability Assistance benefits since January 2009. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant appeared very slow. He felt depressed all the time because he has no income and is always begging people. He referred to being a loser and not having anything. He was pleasant and forthright. He indicated that he hears things all the time like people walking upstairs and behind him although no one is there. Sometimes he sees shadows in his mother's house and it scares him. When he puts the light on he does not see anyone. He feels that he is worthless. Claimant could spell his last name, but stated that he didn't know the date. He could recall four object forward and two objects

backward. He could recall three out of three objects. He named the presidents as Kennedy and Lincoln. He did not know the current president. He expressed his date of birth as [REDACTED]. He named cities as Chicago, California, Bay City, Saginaw, and Flint. He named famous persons as Michael Jackson, Janet Jackson, and Corey. He named current events as people getting killed. In his serial sevens he named 100 and then 93. He used his fingers to add. $3+4=7$, $19+2=21$, $5-2=3$, $8-4=4$, and 6×3 he didn't know. The claimant testified that the abstract thinking of spilled milk was that since you did it there is no sense in crying about it. He named a tree and a bush as the same because both grow from the ground and different because a tree grows a lot taller. He stated that if he found an envelope if there was no money in it he would leave it there and if there was a fire in a theater he would say that there go a fire burning right there. He achieved a full-scale IQ of 73 on the Wechsler Adult Intelligence Scale placing him in the borderline range of intellectual functioning. He had a current GAF of 50 and his Axis I diagnosis was cocaine abuse (305.60) and depressive disorder, NOS (311). On [REDACTED], claimant continued to abuse cocaine.

A [REDACTED] memo from [REDACTED] indicated that the claimant's diagnoses were impulse control disorder, alcohol abuse, marijuana and cocaine abuse, generalized anxiety disorder, and depression not otherwise specified. (New Information, p. 2)

A [REDACTED] Medical Status Report indicated that claimant had acute lumbosacral instability secondary to a congenital deformity of the fifth lumbar and first sacral segment. There were also degenerative arthritic changes involving the lower thoracic in all five lumbar vertebral bodies. He also had chronic obstructive asthma with exacerbation. He was unable to ambulate more than 100 paces because of his back pain. He was to avoid lifting more than ten pounds or perform repetitive movements. His mental status, he was alert but had chronic depressive with

anxiety and is dyslexic and is able to read and write. During school he was always in special education. He donated his left kidney to his younger brother at age 21. He smokes a half a pack of cigarette per day. Pulmonary function studies performed on [REDACTED] revealed chronic obstructive asthma with exacerbation and has wheezing and shortness of breath on minimal exertion. His diagnosis was advanced degenerative arthritis of the lumbar spine with a congenital deformity, psychiatric problems with multiple medications, and bronchial asthma. Other conditions were controlled with medication and treatment.

On [REDACTED], in a Physical Capabilities Assessment his doctor determined that claimant could never do anything. He couldn't sit, stand, walk, lift up to 10 pounds, lift up to 25 pounds, lift over 50 pounds, bend, squat, crawl, kneel, reach over his shoulder, grasp on the right side or grasp on the left side, or push, pull, or stair climbing or do any other climbing.

A Physical Residual Functional Capacity Assessment in the record indicates that claimant could occasionally lift 10 pounds and frequently lift less than 10 pounds. He could stand less than two hour in an eight-hour workday and sit less than six hours in an eight-hour workday. He could push or pull in the upper extremities and in the lower extremities. He could never climb, balance, stoop, kneel, crouch, or crawl. His manipulative limitations were limited in his reaching in all directions, gross manipulation, fingering, and feeling based upon his pain. He had unlimited near acuity, far acuity, depth perception, accommodation, color vision, and field of vision. He had limited hearing and speaking abilities based upon his decreased cognitive functioning secondary to his dyslexia.

A [REDACTED] psychiatric evaluation dated [REDACTED] indicates that the claimant was casually, but very cleanly dressed and groomed. He was alert, pleasant, coherent and fairly talkative, though somewhat concrete. There was no evidence of any

psychotic processes. He talked in a goal-directed manner, exhibiting good mood congruent affect. He described himself to be a very clean person who keeps himself busy by cleaning the house. There was no evidence of any psychotic processes. No hypomanic or manic symptomology. No psychomotor retardation or agitation. No significant anxiety during the session. He had no evidence of a thought disorder. The impression was impulse control disorder, alcohol abuse in remission, marijuana and crack cocaine in remission, and rule out bipolar disorder. His GAF was 40.

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 multiple areas of his body; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. The Administrative Law Judge cannot give weight to the treating physician's Residual Functional Capacity Assessment because it states that claimant can not do anything. There are no laboratory or x-ray findings listed which indicate that claimant's condition is deteriorating. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. Claimant does have some back problems; however, he is able to engage in Michigan Rehabilitation Services activities. In short, the claimant has restricted himself from tasks associated with occupational functioning based upon 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 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 reportedly bipolar or depressed state. The objective psychiatric evidence in the record indicates that claimant was oriented to time, person, and place. Claimant was oriented to time, person, and place during the hearing. He was able to answer all the questions at the hearing and was responsive to the questions.

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. In addition, based upon the claimant's medical reports, it is documented that he had heavy use of drugs in the past which would have contributed to his physical and any alleged mental problems.

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 work as a janitor. This Administrative Law Judge finds that claimant's past work was light work and that he should be able to perform his past work even with his impairments. 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 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'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. The claimant's testimony as to his limitations indicates that he should be able to perform light or sedentary work.

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: October 14, 2009

Date Mailed: October 15, 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:

