

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: 2009-285
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 20, 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 January 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 June 6, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On June 27, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On July 8, 2008, the department caseworker sent claimant notice that his application was denied.

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

(5) On October 8, 2008, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The claimant reportedly has a history of a MI (myocardial infarction) and stents in [REDACTED]. Those records are not in the file. The doctor reports that the claimant has atypical chest pain. The doctor's limitations fall between light and sedentary range. To give the claimant the benefit of any doubt, he will be limited to sedentary work based on the recommendation on the 49 form. 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 at least sedentary work. In lieu of detailed work history, the claimant will returned to other work. Therefore, based on the claimant's vocational profile of a younger individual, two years of college education and a history of unskilled and semi-skilled work, MA-P is denied using Vocational Rule 201.27 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 January 20, 2009. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(7) Additional medical information was submitted and sent to the State Hearing Review Team on May 6, 2009.

(8) On May 18, 2009, the State Hearing Review Team again denied claimant's application stating that claimant has a non-severe impairment/condition per 20 CFR 416.920(c).

(9) Claimant is a 36-year-old man whose birth date is [REDACTED]. Claimant is 6' 1" tall and weighs 150 pounds. Claimant attended two years of college and studied a nursing program. Claimant is able to read and write and does have basic math skills.

(10) Claimant last worked November/December 2008 at [REDACTED] as a stock person where he worked for 4-1/2 weeks and then had to leave because he was short of breath. Claimant also worked loading trucks and worked for the [REDACTED] coaching kids in sports for 9-1/2 years until he had a heart attack.

(11) Claimant alleges as disabling impairments: myocardial infarction, diabetes mellitus type 1, congestive heart failure, coronary artery disease, kidney failure and chest pains.

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 November/December 2008. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant presented at the hospital on [REDACTED] and was discharged on [REDACTED]. Claimant was positive for diabetes, peripheral neuropathy, coronary artery disease status post stenting at [REDACTED] [REDACTED] and hypertension. At examination claimant was alert and oriented x3. His blood pressure, heart rate, respiratory rate and temperature were all fine within normal range. He did not show anything remarkable in the HEENT, neck, or cardiovascular examination. His respiratory system was clear to auscultation bilaterally. His abdomen was soft with no tenderness and he had no noted extremity swelling. Claimant was assessed with unstable angina because he was complaining of chest pain even at rest and he had a history of coronary artery disease. Claimant was started on heparin and cardiology was consulted. He had a cardiac catheterization done which did not show any abnormalities. The stent was patent and cardiology recommended medical management.

Claimant was admitted to the hospital [REDACTED] and discharged [REDACTED] [REDACTED]. He presented to the hospital with chest pain. A CXR, EKG and Troponins were negative in the ER. UA showed 1000 glucose, no ketones. Blood glucose was in excess of 500 mg. Claimant was admitted. His chest pain resolved with IV medication. There was no aggravation with exertion and he was switched to pain medication and sent home in a stable condition.

Claimant arrived at [REDACTED] and was discharged [REDACTED]. His chief complaint was diarrhea and upon physical examination he was oriented and alert, his head was atraumatic, normocephalic, his face was atraumatic. Eyes, conjunctivae and lids were normal. Ears, nose and throat exams were normal. Mouth and

pharynx were normal. Tympanic membrane was normal. Neck was supple and non-tender. His cardiovascular S1 and S2 showed no murmurs, no JVD, no tachycardia. Respiratory sounds were equal bilaterally, no rales, rhonchi or wheezes. His chest was non-tender. His abdomen was soft with bowel sounds present. No masses palpated, no hepatosplenomegaly, guaiac negative stools, internal QC OK. There was no musculoskeletal pain. His skin had capillary refill was normal. Neurological was alert and oriented x3. No pedal edema. He was diagnosed with bacterial diarrhea and given insulin.

On [REDACTED] claimant presented to the hospital and was discharged [REDACTED]. He presented with chest pain. Upon physical examination, he was alert, oriented, in no acute distress with a comfortable appearance. His eyes, sclera were clear and no icterus. His mouth and pharynx were normal. Neck was supple and non-tender. Cardiovascular had a systolic murmur and tachycardia. His breath sounds were equal bilaterally with no rales, rhonchi or wheezes. His chest was non-tender and movement was symmetrical. Gastrointestinal, his abdomen was soft, non-tender and bowel sounds were present. There was no musculoskeletal pain, back was non-tender, joints without deformity, neck non-tender. His skin had capillary refill normal, warm, skin color was good. He was alert and oriented x3, motor intact in all extremities, gait was normal with normal speech. No pedal edema. Claimant was diagnosed with chest pain, hypertension and hyperglycemia. Pain was relieved after nitroglycerin and morphine.

Claimant presented to the hospital on [REDACTED] and was discharged [REDACTED]. Claimant presented with chest pain. He was diagnosed with coronary artery disease, diabetes and hypertension. His condition was stable. He was treated with medication and sent home.

A Medical Examination Report in the file indicates that claimant was normal in all examination areas except for the cardiovascular where he had a history of myocardial infarction, stent in [REDACTED] and atypical chest pain. Neurologically, he had a head injury with occasional headaches. Claimant was 6' 1" tall and 143 pounds and his blood pressure was 108/76 on [REDACTED], date of examination. The clinical impression was that claimant was stable and he had no physical limitations. The claimant could stand or walk about six hours in an eight hour day and sit about six hours in an eight hour day. Claimant could occasionally carry 10 pounds or less, but never carry 20 pounds or more. Claimant could do simple grasping, reaching, pushing/pulling and fine manipulating with both of his upper extremities and could operate foot and leg controls with both feet and legs. Claimant had some memory limitations due a [REDACTED] head injury, but he could meet his needs in the home. (Pages 8 and 9)

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/psychiatric evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant did testify that he doesn't have any mental impairment. Claimant has reports of pain in his chest and 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 clinical impression is that claimant is stable. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. Although claimant has had coronary artery disease and a stent placed in [REDACTED], his condition has improved and he should be able to perform at least light or sedentary work even with his impairments. In short, the claimant has restricted himself from tasks associated with occupational functioning based upon claimant's

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 or 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 based upon his ability to perform his past relevant work at [REDACTED] as a stock person. There is insufficient objective medical evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work that 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 testified on the record that he does live in a transient housing program or group home and that he washes dishes, does windows and laundry. Claimant testified that he can walk two blocks, stand or a half an hour at a time and sit for about two hours at a time. Claimant is able to squat, bend at the waist, shower and dress himself, tie his shoes and touch his toes. Claimant testified that the

heaviest weight he can carry is 10 pounds. Claimant is right-handed and his hands and arms are fine. Claimant testified that his legs and feet do sting sometimes from diabetes mellitus but he does not need an assistive device for ambulation. Claimant testified that his level of pain on a scale from 1 to 10 without medication is an 8/9 and with medication is a 3. Claimant does not smoke, drink or do drugs and he goes to the doctor two times per month and he usually gets his medications at the ER. Claimant would benefit from the Adult Medical Program. If that program is still open, the department is ordered to make a determination of claimant's eligibility for said program. Claimant has failed to file 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 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. Under the Medical-Vocational a younger individual (age 36), 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. Claimant would benefit from a referral to the Michigan Rehabilitation Services to see if he is able to perform duties with them. Persons who are involved with Michigan Rehabilitation Services may be eligible to receive State Disability Assistance benefits.

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: June 29, 2009

Date Mailed: June 30, 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.

2009-285/LYL

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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