

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: 2009-29593  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
September 23, 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 September 23, 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 December 17, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On May 12, 2009, the Medical Review Team denied claimant's application stating that claimant's impairments were non-exertional.

(3) On May 19, 2009, the department caseworker sent claimant notice that his application was denied.

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

(5) On July 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 medium work per 20 CFR 416.967(c) pursuant to Medical-Vocational Rule 203.28 and stated that this may be consistent with past relevant work. However, there is no detailed description of past work to determine this. In lieu of denying benefits as capable of performing past work a denial to other work will be used.

(6) Claimant is a 27-year-old man whose birth date is [REDACTED]. Claimant is 5' 6" tall and weighs 190 pounds. Claimant recently gained 45 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills.

(7) Claimant last worked as a dishwasher and prep cook. Claimant also attended [REDACTED] [REDACTED] for two years as a construction technician.

(8) Claimant alleges as disabling impairments: a hernia and depression.

#### 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 only worked as a dishwasher and prep cook. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a [REDACTED] report of [REDACTED] indicates that claimant does have anxiety attacks but his anxiety attacks were improving because he has been taking his medication for a few months. There was no obsessive compulsive behavior appreciated. Claimant was 5' 5" tall and weighed 190 pounds. Claimant was fairly dressed, fairly groomed, with decreased eye contact, and his gait was slow but normal. Claimant was in good contact with reality and his insight was fair. He was relaxed, had decreased motivation, low self-esteem, and a tendency to minimize symptoms. Claimant's stream of mental activity was spontaneous, circumstantial, organized, with no pressure of speech. In his mental thought and thought content he did recall that he was hearing some voices in the past but unable to describe the voices. Claimant said he had not been hearing them lately because he has been taking his medications. He has a feeling that people are watching him, following

him, and may hurt him. Claimant said he tried to cut his hands a few times and tried to hang himself a few times in the past requiring hospitalization but denied any recent plans or attempts. Mood swings as described earlier, no gross delusions, sleep is tossing and turning, 5-6 hour with medication and feeling tired is somatic complaint. He was depressed, anxious, friendly, and his affect was blunt. He was oriented to time, person, and place. He knew that he was at a doctor's clinic and that it was morning and he knew himself. Memory: Immediate—February 5, February 5, and February 3. He knew his birth date. Obama, Bush, Clinton, Washington were past presidents. Information: Big cities were Detroit, Chicago, and Miami. He did not remember anything any famous people now and couldn't think about it. Calculations:  $5+4=9$  and when he was asked  $6 \times 7$  he said he needed a pen and paper, otherwise he couldn't do it. Abstract Thinking: The grass is always greener on the other side of the fence, he said I don't know. Don't cry over spilled milk, he didn't know. Similarities and Differences: Bush and tree how are they alike and different, he said that both were green, but he didn't know the difference. Judgment: He would put a letter in the mailbox if he found a stamped, addressed envelope in the street. The claimant had no head injury and no seizures. He was diagnosed with a bipolar disorder, chronic depression, panic disorder, and his current GAF was 65. His prognosis was fair and the psychiatrist indicated that claimant would not be able to manage his benefit funds. (pp. 7-9)

A Mental Residual Functional Capacity Assessment indicates that claimant was markedly limited in 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, the ability to accept instructions and respond appropriately to criticism from supervisors, and the ability to get along with co-workers or peers without

distracting them or exhibiting behavioral extremes. Claimant was only moderately limited in a few areas and not significantly limited in most areas. (pp. 16-17)

A Medical Examination Report in the date dated [REDACTED] indicated that claimant was normal in all areas of examination except that he had depression and anxiety. The physical examination indicated that claimant was 5' 6" tall and weighed 190 pounds. The clinical impression was that claimant was stable. He had no physical limitations. He did not have assistive devices which were medically required or needed for ambulation. He could do simple grasping, reaching, pushing/pulling, and fine manipulating with his upper extremities and he could operate foot and leg controls. He had some mental limitations in social interaction. (pp. 18-19)

It should be noted that Administrative Law Judge Rhonda P. Craig also determined that claimant was not disabled for purposes of the Medical Assistance program November 5, 2008, Hearing Register #2008-20789.

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/psychiatric 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. Claimant testified that he does cook one time per day and cooks things like hotdogs and hamburgers and that he does grocery shop one time per week with no help. He cleans his home by mopping, sweeping, and taking out the trash. Claimant does cut the grass and goes fly fishing. The clinical impression is that claimant is stable. There is no medical finding that claimant has any muscle

atrophy or trauma, abnormality or injury, x-ray or laboratory finding that are consistent with a deteriorating condition. 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 no evidence in the record indicating claimant suffers mental limitations resulting from his reportedly depressed state. The Mental Residual Functional Capacity Assessment in the record indicates that claimant has a basically mental status report. The evidentiary record is insufficient to find that 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 based upon his ability to perform past relevant work. Claimant's past relevant work was light work. As a dishwasher/prep cook does not require strenuous physical exertion, 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 testified on the record that he does have depression and a bipolar disorder.

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, claimant was able to answer all the questions at the hearing and was responsive to the questions. 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 guidelines, a younger individual (age 27) with a 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/  
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Landis Y. Lain  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: November 13, 2009

Date Mailed: November 13, 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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