

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: 2009-30334

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

September 29, 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 29, 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 March 12, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On June 5, 2009, the Medical Review Team denied claimant's application stating that claimant's impairments were non-exertional and that claimant could perform other work.

(3) On June 8, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On June 26, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On August 3, 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 202.21 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, unskilled work. Therefore, based on the claimant's vocational profile of skilled work, MA-P is denied using Vocational Rule 202.21 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 47-year-old man whose birth date is [REDACTED]. Claimant is 5' 5" tall and weighs 286 pounds. Claimant recently gained 40 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills. Claimant also has two years of college as a medical assistant, computer technology, and he also attended beauty school and went to [REDACTED]

(7) Claimant last worked in 2002 as a medical assistant doing triage on patients. Claimant has also worked in retail stores as a clerk and cashier.

(8) Claimant alleges as disabling impairments: depression, loss of a kidney, hypertension, chronic back and hip pain.

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 2002. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a psychiatric evaluation performed [REDACTED] by the [REDACTED] indicates that claimant is 5' 6" tall and weighs 265 pounds. He said that he had gained about 10-15 pounds recently. The claimant was adequately dressed and groomed. He was sitting in the stoop position with frequent crying spells

describing his condition. Gait was slow but normal. The claimant had good contact with reality. Insight was fair. The claimant was relaxed. The claimant had decreased motivation and motor activity. The claimant had low self-esteem and had a tendency to minimize symptoms. His stream of mental activity was spontaneous, slow and circumstantial, but organized with whispering speech. The claimant denied any hallucinations or paranoia. No suicidal ideation, plan, or attempts. Claimant had a snappy and frustrated mood, but no mood swings appreciated. No gross delusions. Sleep was tossing and turning 3-5 hours. He had bad dreams and night sweats a lot. Somatic symptoms were headache and feeling tired. His emotions were depressed, anxious and friendly. His affect was blunt. The claimant was alert and oriented to time, person and place. The claimant was able to recall three digits out of five forward and two out of five backward. The claimant was able to recall two out three objects after a few minutes. When asked to name the past few presidents, the claimant stated, "Obama, Clinton, Bush, and Reagan." The claimant knew his date of birth. When asked to name five large cities, the claimant said, "Detroit, Chicago, Atlanta, and Miami." The claimant was able to name famous people. In calculations, $5+4=9$ and $6 \times 7 =$ the claimant stated, "I need to think about it." In abstract thinking when asked to interpret the proverb, "The grass is greener on the other side of the fence", the claimant stated, "I don't know." When asked to interpret the proverb, "Don't cry over spilled milk," the claimant stated, "Don't worry about it, you have no control." When asked about similarities and differences between a bush and a tree, the claimant said, "Both are green." The claimant did not know the difference. When asked what the claimant would do if he found a stamped, addressed envelope, the claimant stated, "Put it in the mailbox." He was diagnosed with major depressive disorder, probable posttraumatic stress disorder, a benign renal tumor, status post nephrectomy,

and an Axis V GAF of 60 with a fair prognosis and the statement that he would not be able to manage his own funds. (pp. 5-7)

A [REDACTED] physical examination indicates that claimant was well-developed, well-nourished, cooperative, and in no acute distress. Claimant was awake, alert, and oriented x3. The claimant was dressed appropriately and answered questions fairly well. His height was 5' 7-1/2" tall and his weight was 264 pounds. His pulse was 98, respiratory rate was 17, blood pressure was 180/132, 170/126, 164/126. Visual acuity without glasses was 20/70 on the right and 20/70 on the left. With glasses visual acuity was 20/20 bilaterally. HEENT: normocephalic/atramatic. EYES: Lids were normal. There was no exophthalmos, icterus, conjunctiva, erythema, or exudates noted. PERRLA: Extraocular movements intact. EARS: No discharge in the external auditory canals. No bulging erythema, perforation of the visible tympanic membrane noted. NOSE: There was no septal deformity, epistaxis, or rhinorrhea. MOUTH: Teeth were in fair repair. NECK: Supple. No JVD noted. No tracheal deviation. No lymphadenopathy. Thyroid was not visible or palpable. ENT: External inspection of ears and nose revealed no evidence of acute abnormality. RESPIRATORY: The chest was symmetrical and equal to expansion. The lung fields were clear to auscultation and percussion bilaterally. There were no rales, rhonchi, or wheezes noted. No retractions noted. No accessory muscle usage noted. No cyanosis noted. There was no cough. CARDIOVASCULAR: Normal sinus rhythm. S1. S2. No rubs, murmur, or gallop. GASTROINTESTINAL: Soft, benign, non-distended, and non-tender with no guarding, rebound, palpable masses. Bowel sounds were present. Liver and spleen were not palpable. SKIN: Positive for surgical scar over the abdomen. No significant skin rashes or ulcers. EXTREMITIES: He had pain in his left hip. No obvious spinal deformity, swelling, or muscle spasm noted. Pedal pulses were 2+ bilaterally. There was no calf tenderness, clubbing, edema,

varicose veins, brawny erythema, stasis dermatitis, chronic leg ulcers and muscle atrophy or joint deformity or enlargement was noted. BONES AND JOINTS: The claimant did not use a cane or aid for walking. He had a slight limp on the left side. Stance was normal. Tandem walk and heel walk were done without difficulty. He stated he was unable to do toe walk. He was able to squat to 60% of the distance and recover, and bend to 60% of the distance and recover. Grip strength was equal bilaterally. The claimant is right-handed. Gross and fine dexterity appeared bilaterally intact. Abduction of the shoulders was 0-150. Flexion of the knees was 0-150. Straight leg raising while lying was 0-50, while sitting was 0-90. NEUROLOGIC: General: The claimant was alert, awake, and oriented to person, time and place. Cranial Nerve II: Vision as stated in vital signs. III, IV, VI: No ptosis, nystagmus. PERRLA. Pupils 2 mm. bilaterally. V: No facial numbness. Symmetrical response to stimuli. VII: Symmetrical facial movements noted. VIII: Can hear normal conversation and whispered voice. IX, X: Swallowing intact. Gag reflex intact. Uvula midline. XI: Head and shoulder movement against resistance was equal. XII: No sign of tongue atrophy. No deviation with protrusion of tongue. Sensory Functions: Intact to sharp and dull gross motor testing. Motor Exam: Revealed fair muscle tone without flaccidity, spasticity, or paralysis. He had a slight limp on the left side. Cerebellar: Finger-to-nose test done very well. The impression was that claimant has hypertension and his blood pressure was markedly elevated and he needed immediate attention for that problem. Claimant had a left nephrectomy in 2005. (pp. 9-11)

A Medical Examination Report in the file dated [REDACTED] indicates that claimant is normal in all areas of examination except for a tender back with limited motion and a major depressed mood. The clinical impression was that claimant is deteriorating and that he can

occasionally lift ten pounds or less, stand and/or walk less than two hours in an eight-hour workday. He could use both upper extremities for simple grasping, reaching, and fine manipulating, but not for pushing/pulling and could operate foot and leg controls with both feet and legs. He had some mental limitations in the form of comprehension, memory, and social interaction. (pp. 21-22)

A Mental Residual Functional Capacity Assessment and a Psychiatric Examination Report contained in the file indicate that claimant was markedly limited in the ability to maintain attention and concentration for extended periods of time, 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. Claimant was moderately limited in eleven other areas, but not limited in the ability and understand and remember one or two-step instructions, the ability to carry out simple one of two-step instructions, in the ability to make simple work-related decisions, the ability to ask simple questions or request assistance, the ability to get along with coworkers or peers without distracting them or exhibiting behavioral extremes, the ability to maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness, and the ability to be aware of normal hazards and take appropriate precautions. (pp. 27-30)

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 few corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. There are no laboratory or

x-ray findings listed in the file. Claimant testified on the record that he doesn't do any of his activities of daily living. Claimant testified that he can walk six or seven feet with a cane and it is not prescribed by his doctor. He can stand for five minutes and can sit for 10-15 minutes at a time and he needs help to shower and dress himself. Claimant testified that he can carry two pounds and that he is left-handed and that his hands and arms are fine except for radiating pain and his left leg hurts. Claimant testified that he cannot squat, bend at the waist, tie his shoes, or touch his toes. Claimant testified that he is bleeding from his penis, and having problems with his right kidney and that he has irregular bowel movements as well as hypertension and chronic pain on his left side for many years. Claimant did testify that he had a kidney removed in [REDACTED] and he is depressed and pain consumes his day. The DHS-49 form contained in the file does not support the extreme physical limitations that claimant lists. Claimant indicates that he cannot lift any amount of weight or use his upper extremities for any repetitive actions; however, the DHS-49 report indicates that claimant can do simple grasping, reaching, and fine manipulating with his upper extremities. The form indicates that assistive devices are not medically needed or required for ambulation. There was no opinion rendered regarding how long claimant can sit, but does indicate that claimant can only walk or stand less than two hours in an eight-hour day. The clinical impression that claimant is deteriorating; however, there is no finding made in the objective medical forms that claimant is deteriorating. The only medical finding is that claimant does have hypertension which could be potentially dangerous because claimant has only one kidney; however, 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, the DHS-49 and claimant has restricted claimant 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 impairment.

Claimant testified that he does have depression.

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 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 is only moderately limited in most areas. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. Claimant was able to answer all the questions at the hearing and was responsive to the questions. Claimant was oriented to time, person and place during the hearing. The objective medical evidence contained in the file does not establish depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. For these reasons, the Administrative Law Judge finds that claimant as failed to meet his burden or proof at Step 2. Claimant must be denied benefits at this step based upon his failure to meet the evidentiary burden.

If claimant had 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's past relevant work was light work. This Administrative Law Judge finds that claimant could probably work as a clerk or cashier as well as a medical assistant 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. Claimant does indicate that he is morbidly obese based upon his height of 5' 5" tall and 286 pounds. However, there is insufficient objective medical evidence that claimant suffers from a combination of impairments which would prevent him from performing his prior jobs.

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 does retain bilateral manual hand dexterity and should be able to perform at least sedentary work. 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.

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. Claimant did testify on the record that his pain on a scale from one to ten without medication is a twelve and with medication is a seven. This Administrative Law Judge finds that claimant did testify that he does receive some relief from his pain medication. 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 47), with a more than high school education and a skilled work history who is limited to light work is not considered disabled pursuant to Medical-Vocational Rule 202.21 per 20 CFR 416.967(b).

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: December 18, 2009

Date Mailed: December 21, 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:

