

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: 2009-3258

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 18, 2009

Kalamazoo 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 February 18, 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 May 21, 2008, claimant filed an application for Medical Assistance, State Disability Assistance and retroactive Medical Assistance benefits to February 2008, alleging disability.

(2) On September 5, 2008, the Medical Review Team denied claimant's application stating that claimant's impairments lacked duration.

(3) On September 9, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On October 20, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On November 10, 2008, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the claimant was treated and released in improved condition. Medical opinion was considered in light of 20 CFR 416.927. The evidence in the file does not demonstrate any other impairment that would pose a significant limitation. The medical evidence of record does not document a mental/physical impairment that significantly limits the claimant's ability to perform basic work activities. Therefore, MA-P is denied per 20 CFR 416.921(a). Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 due to the lack of severity.

(6) Claimant is a 46-year-old man whose birth date is [REDACTED]. Claimant is 5' 11" tall and weighs 170 pounds. Claimant attended the 11th grade and has no GED. The claimant testified that he is learning disabled but he is able to read and write but not the best. Claimant testified that he does have does have basic math skills.

(7) Claimant last worked in 2008 as a chore provider. Claimant has also worked tearing down transmissions, as a meat cutter and doing temporary work as a lawn care worker.

(8) Claimant alleges as disabling impairments: diabetes mellitus.

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 approximately January 2008. Therefore, claimant is not disqualified from receiving disability at Step 1. It should be noted that claimant testified that he left his job because the department was taking his entire check for child support. He did not state that he left his job because he was unable to perform the job based upon his medical condition.

The objective medical evidence on the record indicates that hospital records of [REDACTED] indicate that claimant was treated for cocaine abuse and poorly controlled diabetes. During the hospitalization glycemic control was established. He was educated on diabetes and given community resource referrals before discharge. According to [REDACTED] history and physical examination, claimant's temperature was 99.3 degrees Fahrenheit; pulse of 100; respirations of 18; blood pressure of 161/75; oxygen saturation 100 percent on room air. The

claimant was a thin African American male. He was alert and oriented x3. He was slow to respond and in no acute distress. Claimant's head was normocephalic, and atraumatic. Eyes, his extraocular movements were intact. Ears were normal to external examination. Mouth and oral necrosis was dry and his neck was supple. Claimant's chest was symmetrical, non-tender to palpation, bilaterally clear to auscultation. Regular rate and rhythm in the cardiovascular area, normal S1, S2, no murmurs, rubs or gallops noted. Claimant's abdomen was soft, non-tender and non-distended and his bowel sounds were present in all quadrants. Claimant's extremities have no cyanosis, erythema or edema. In his assessment and plan it stated that claimant had type 2 diabetes mellitus which was uncontrolled with blood sugars greater than 600 and cocaine addiction and that he had recently admitted to [REDACTED] for altered mental status for cocaine overdose. (Page 45) A CT of the brain was a normal study with mild mucosal thickening and mucous in the paraspinal sinuses incidentally noted. (Page 46)

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 no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant testified on the record that he does not have any mental impairment. There are no laboratory or x-ray findings and no extreme physical limitations. Claimant testified on the record that he can walk one to two blocks, stand for a half an hour, and sit all day long. Claimant is able to squat, bend at the waist, tie his shoes if he's sitting down, shower and dress himself, but cannot touch his toes. Claimant testified that the heaviest weight he can carry is 25 pounds and that he can carry 25 pounds repetitively. Claimant testified that he is right handed and his hands and arms are fine. Claimant testified that he does have some numbness in his feet. Claimant testified that his level of pain on a scale from

1 to 10 without medication is an 8 and that the pain is in his lower back and with medication is a 2 to a 3. Claimant testified that he does smoke a pack of cigarettes in a week and a half and that he used to use cocaine but stopped using it approximately one year ago. Claimant testified that he does cook everyday and cooks things like ramen noodles and bologna and that he does grocery shop one time per month with no help and that he does clean his own home by doing dishes, mopping the floor, and cleaning the bathroom.

This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical or mental impairment. The claimant was able to answer all the questions at the hearing and was responsive to all the questions. The evidentiary record is insufficient to find claimant suffers 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. This Administrative Law Judge also finds that claimant worked until 2008 as a chore provider whereupon he left his job because the State of Michigan was taking all of his money for child support. Claimant did not leave his job because he was unable to perform the duties based upon his health. Therefore, claimant's impairments also do not meet duration.

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 as a chore provider, as a person who tears down transmissions or as a meat cutter. The objective

medical evidence on the record does not establish that claimant cannot perform strenuous exertion or that he cannot perform his prior work. Claimant is disqualified from receiving disability at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not the 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. The claimant's testimony as to his limitations indicates that he should be able to perform light or sedentary work.

Claimant's testimony and the information contained in the file indicate that claimant has a history of tobacco and cocaine abuse. Applicable hearing is the Drug Abuse and Alcohol (DA&A Legislation, Public Law 104-121, Section 105(b)(1), 110 STAT. 853, 422 USC 423(d)(2)C, 1382c(a)(3)J). The law indicates that individuals are not eligible and/or not disabled where drug addiction or alcoholism is a contributing factor material to the determination of disability. After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that the claimant does not meet the statutory disability definition under the authority of the DA&A Legislation, even if he were to be considered to be disabled at all other steps, because his substance abuse is material to his alleged impairment and alleged disability. 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. In addition, claimant did testify that he does receive some substantial relief from his pain medication. 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 was able to answer all the questions at the hearing and was responsive to all the questions. Claimant was oriented to person, time and place. There is insufficient objective medical/psychiatric evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would keep claimant from working at any job. 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 46), with a less 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.

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: March 11, 2009

Date Mailed: March 11, 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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