

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: 2009-32727

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

October 21, 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 October 21, 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 February 23, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On April 29, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work and that his impairments were non-exertional.

(3) On June 13, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On June 28, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On August 28, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The claimant has back pain and restricted motion without significant neurological abnormalities. The claimant was sad and anxious but his mental status was otherwise unremarkable. 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 unskilled, light work. The claimant reported no relevant work history. Therefore, based on the claimant's vocational profile of a younger individual, high school equivalent education and no relevant work history, MA-P is denied using Vocational Rule 202.20 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days.

(6) Claimant is a 49-year-old man whose birth date is [REDACTED]. Claimant is 6' 1" tall and weighs 175 pounds. Claimant has a GED and attended the 10th grade. Claimant is able to read and write a little and does have basic math skills.

(7) Claimant testified that he last worked five years ago doing some plumbing in the [REDACTED] where he was incarcerated for 8-9 years. Claimant has also worked as a plumber's apprentice and at a carwash cleaning cars and doing manual labor.

(8) Claimant alleges as disabling impairments: depression and lower vertebra deterioration.

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 for approximately five years. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a Mental Residual Functional Capacity Assessment in the record indicates that claimant is not significantly limited in many areas and markedly limited in most areas as of the [REDACTED] date of examination. The psychiatric evaluation indicates that the claimant demonstrated good grooming, timeliness, orientation x4, sadness, anxious appearance, normal speech, intact judgment, had logical and coherent thought process, no psychosis evident, no delusional thoughts, below average

intelligence, fair insight and irritable behavior. After careful assessment of self-harm risk, the claimant was determined to have no current suicidal thoughts, intent, or plan. The claimant was receptive to advice. His assessment was major depressive disorder and a GAF of 48. (p. 14-19)

A Medical Needs form in the file indicates that claimant needs assistance with meal preparation and housework and should avoid heavy lifting and pushing/pulling but he can work at any job, but not his usual job. (p. 10)

A Medical Examination Report in the file dated [REDACTED] indicates that the clinical impression is that claimant is stable, that he could stand or walk about six hours in an eight-hour day and sit about six hours in an eight-hour day. He could frequently lift 20 pounds or less and could occasionally lift 25 pounds, but could never lift 50 pounds or more. He could use his upper extremities for simple grasping, reaching, and fine manipulating, but not for pushing/pulling. Claimant could operate foot and leg controls with both feet and legs. (p. 9)

In [REDACTED] the claimant was sad and anxious but had normal speech. His thought processes were logical and coherent and there was no psychosis evident. His diagnosis was major depressive disorder, recurrent and moderate. (p. 19)

In [REDACTED], the claimant's blood pressure was controlled. He had restricted movement of the lower back with associated pain. There was no evidence of neurological abnormalities noted. He did not require an assistive device for ambulation. (pp. 8-9)

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 evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant has reports of pain in his back and depression; however, there are insufficient corresponding clinical findings

that support the reports of symptoms and limitations made by the claimant. Claimant did testify that he has a driver's license but doesn't drive and his family takes him where he needs to go. Claimant testified that he lives alone in an apartment and he is single and his family supports him. Claimant does receive Food Assistance Program benefits and the Adult Medical Program. Claimant testified that he does cook one time per week and cooks things like eggs and bacon. Claimant testified that he does the dishes and straightens his sheets. Claimant testified that he watches television 8-9 hours a day and that he can walk 25 feet, stand for 5-10 minutes at a time, and sit for 5 minutes at a time. Claimant testified that he can shower and dress himself but he does need help with his bottoms and bathing. Claimant testified that he can't squat or bend at the waist or tie his shoes or touch his toes. Claimant testified that the heaviest weight he can carry is 15-20 pounds, but he can't bend down to pick them up. Claimant testified that he is right-handed and there is nothing wrong with his hands and arms. Claimant testified that his level of pain on a scale from 1 to 10 without medication with a 9/10 and with medication is a 7. Claimant testified that in a typical day he wakes up and takes a few minutes to get going. He brushes his teeth, his son comes and helps him get dressed, and then he goes and sits and watches television.

The DHS-49, Medical Examination Report, indicates that most areas of examination are normal except for the lumbar area. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. The DHS-49 indicates that claimant's clinical impression is that he is stable. Claimant has restricted himself from tasks associated with occupational functioning based upon his reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that claimant has met the evidentiary burden of proof can be made. This

Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers mental limitations resulting from his reportedly depressed state.

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).

The Mental Residual Functional Capacity Assessment is not consistent with the psychiatric report of [REDACTED]. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. Claimant was oriented to time, person, and place during the hearing. Claimant was able to answer all the questions at the hearing and was responsive to the questions. For these reasons, this Administrative Law Judge finds that claimant has failed to meet his burden of proof at Step 2. Claimant must be denied benefits at this step based upon his failure to meet the evidentiary burden.

If claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of claimant's condition does not give rise to a finding that he would meet a statutory listing in the code of federal regulations.

If claimant had not already been denied at Step 2, this Administrative Law Judge would have to deny him again at Step 4 based upon his ability to perform his past work in a carwash. 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. The clinical documentation in the file is not consistent with claimant's stated limitations. The claimant's testimony as to his limitations indicates that he should be able to perform at least light or sedentary work. Claimant does retain bilateral hand dexterity. Therefore, based on the claimant's vocational profile of a younger individual, high school equivalent education and a history of light work, MA-P is denied using Vocational Rule 202.20 as a guide. Retroactive MA-P was considered in this case and is also denied.

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: November 25, 2009

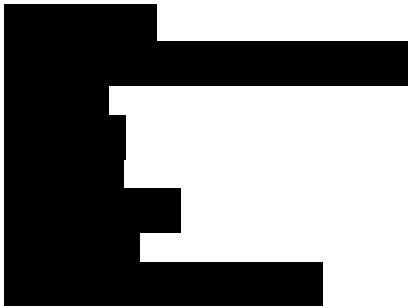
Date Mailed: November 30, 2009

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.

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.

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