

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg No.:200936731
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: November 04, 2009
Macomb County DHS (50)

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 the claimant's request for a hearing. After due notice, a telephone hearing was held on November 04, 2009. The claimant 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 a material fact:

- (1) On March 18, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On June 8, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.
- (3) On June 9, 2009, the department caseworker sent claimant notice that his application was denied.
- (4) On June 22, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On September 30, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: Claimant is capable of performing other work in the form of light work per 20 CF R 416.967(b) pursuant to Medical Vocational Rule 202.20.

(6) Claimant is a 52-year-old man whose birth date is [REDACTED]. Claimant is 5'4" tall and weighs 182 pounds. Claimant is a high school graduate and was in Special Education for speech. Claimant is able to read and write and does have basic math skills.

(7) Claimant last worked 2008 for the [REDACTED] ringing the bill collecting money and was seasonal employee. Claimant also worked at a automotive factory doing plastic work for 3 years and driving a truck for 6 years.

(8) Claimant alleges as disabling impairments: gout and anxiety.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

The Medical Assistance (MA) program is established by the 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 (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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 2008. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant testified that he can walk 40 feet, stand for 7 minutes, sit for 15 minutes at a time. Claimant stated that he can shower and dress himself but not squat because of the pain in his back and kidneys, and he can't bend much but he can sometimes tie his shoes but not touch his toes. Claimant testified that the heaviest weight he could carry is a 16 ounce cup of coffee and he is left handed and in his right hand he loses the feeling and has numbness in his hands. Claimant testified that his level of pain on a scale from 1-10 without medication is 20 and with medication is a 6. Claimant testified that he does smoke a pack of cigarettes per day and his doctor has told him to quit and he is not in a smoking cessation program. Claimant testified that he does have a driver's license and he drives 1-2 times per week for a half a block and he does cook in the microwave and he goes to grocery shops one time per month with no help. He does clean his house by picking up but he doesn't do any outside work and has no hobbies. Claimant testified that in a typical day he does nothing because he has no electricity.

A May 19, 2009, physical examination indicates that claimant was 51 years old and had a height of 5'6" tall and had a weight of 196 pounds. His pulse was 69, blood pressure 157/104 and 160/100. Visual acuity without glasses was 20/20 in the right and 20/20 in the left. His chest was clear to auscultation. His neck had no bruits in the carotid area. The abdomen was soft and supple. The extremities had no edema. Heart had regular rate and rhythm. The neurologic area: the claimant was alert, awake and oriented x3. The cranial nerves: pupils were equal and reactive. Extraocular movements were intact. Visual fields were full. Fundi were normal. No gross facial weakness or asymmetry. Tongue and uvula are central. In the motor skills there was no pronator drift. Muscle strength 4+/5 in all muscles in all 4 extremities. Reflexes were 2 in the upper extremities and in the knees and ankles. Plantars were down going. He has positive tinel's test suggestive of carpal tunnel syndrome. Coordination intact finger to nose. The gait: the claimant had positive straight leg raising on the right. The claimant was able to walk on his heels and toes. He was able to do a tandem gait. He had some difficulty getting up from a squatting position. He was able to get up on the examination table. Based on the days examination, the claimant has difficulty bending, lifting, and carrying heavy weights or standing for prolonged periods of time. He also has a possibility of carpal tunnel syndrome, which has never been treated. There are no problems as far as sitting or walking. The impression is high blood pressure, a history of cardiac problems, a history of arthritis and back pain (p. 4).

A psychological examination dated May 4, 2009, indicates that claimant sustained contact with reality, mediocre self esteem and somewhat increased motor activity. Claimant appeared anxious and somewhat over-confident but amotivational. He presented marginal insight. He literally did not know what was wrong with him and could not discern his complaints and connect his symptomologies. He came to the interview alone and stated that his father drove him to clinic. On a scale is was 5'7" tall and weighed 188 pounds. He walked fast and steadily with full equilibrium. There was no abnormal posture or mannerisms. His hygiene and grooming appeared marginal. He was punctual for his appointment and he appeared the stated chronological age. Stream of mental activity: claimant was spontaneous, and his speech was normal, productive and audible. Reaction time was prompt. His thought process was circumstantial and with re-direction he was able to go on goal directed conversation and conclusion. In his mental trend and thought content: the claimant did not appear to be responding to inter-stimuli and denied subjective hallucinatory experiences of any sensory or modalities. His thought content was devoid of delusional conviction of anything. There was no sign of persecutory feelings, ideas, and idiosyncratic thoughts of insertion or withdrawal. Claimant denied sense of worthlessness, denied suicidal ideations, plans, and homicidal ideations and plans. Claimant presented some somatic complaints at length, variety of complaints, such as pain, numbness also short term memory loss and amnesia. With his current treatment regimen, claimant sleeps well and related has been prescribed hypnotics to facilitate his sleep, but he fails to remember the name of his prescribed sedative hypnotic medications. Claimant's

appetite has been increased and so has his weight, particularly attributed to the recent past upgrading of his treatment regimen. He did not appear visibly depressed and denied suggestive experiences of depressed sad feelings. He was alert and oriented to time, place and person. His recollection of the date was May 4, 2009. He stated he was in a doctor's office and identified the function of the interviewer as someone who performs mental examinations. In the memory: his immediate memory, he could repeat 5 numbers forward sequentially. He failed to recall them backward, only 2 digits out of 5. In recent memory: claimant can recall 3 objects, 3 minutes later. In past memory: claimant can name the past few presidents as Obama, George Bush, and Clinton. Claimant can tell his birthday as [REDACTED] age 51. When asked to name 5 large cities, the claimant replied New York, Detroit, San Francisco, Philadelphia, and Miami. Calculations: subtracting of serial 7's from 100 = 93, 86, 77, and lost concentration at this point. In process of performing serial 3's from 20 proceeded on 17, 14, 11, 8, 5, and 2. Abstract thinking: when asked to interpret the proverb, don't cry over spilled milk, the claimant replied, "If you lost something just get on with it". Similarities and differences: when asked how an apple and an orange alike, the claimant grasps concepts of fruits have similarities. Difference is in taste. In judgment: when asked what he would do if he discovered a fire in a theatre, the claimant replied "notify someone." He was diagnosed with an anxiety disorder, dependent personality traits, and arthritis and his axis GAF was 40, and his prognosis was fair to guarded and he would be able to manage his own funds (pp. 11-12).

A medical examination report dated March 20, 2009, indicates that claimant was normal in all areas of examination, that he was 5'8" and his blood pressure was 153/79 and he was left hand dominant. His condition was stable and he was not assessed for his ability to walk, sit, stand and had no mental limitations (pp. 22-23).

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 no 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. The clinical impression is that claimant is stable. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, 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.

Claimant alleges the following disabling mental impairments: anxiety 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 in the record indicating claimant suffers severe mental limitations. There is no mental residual functional capacity assessment in the record. There is insufficient 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. Claimant was oriented to time, person and place during the hearing. Claimant was able to answer all of the questions at the hearing and was responsive to the questions. 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 his past relevant work. There is no evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work in which he has engaged in, in the past. Therefore, if claimant had not already been denied at Step 2, he would be denied again 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.

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. 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. 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.

It should be noted that claimant continues to smoke despite the fact that his doctor has told him to quit. Claimant is not in compliance with his treatment program.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

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. BEM, Item 261, p. 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.

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that claimant was not eligible to receive Medical Assistance and/or State Disability Assistance.

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: July 20, 2010

Date Mailed: July 21, 2010

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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