

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: 2009-6753
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 19, 2009
Ingham 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 March 19, 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 August 11, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On October 24, 2008, the Medical Review Team denied claimant's application stating that claimant's impairments were non-severe.

(3) On October 28, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On November 17, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On December 30, 2008, the State Hearing Review Team again denied claimant's application stating that claimant's impairment was non-severe per 20 CFR 416.920(c).

(6) The hearing was held on March 19, 2009. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(7) Additional medical information was submitted and sent to the State Hearing Review Team on April 7, 2009.

(8) On April 24, 2009, the State Hearing Review Team again denied claimant's application stating that claimant has a non-severe impairment per 20 CFR 416.920(c).

(9) Claimant is a 28-year-old man whose birth date is [REDACTED]. Claimant is 6' tall and weighs 190 pounds. Claimant recently gained 20 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills.

(10) Claimant last worked in 2008 at [REDACTED] as a pizza delivery person. Claimant has also worked as a head cook and has worked at [REDACTED] and [REDACTED]

[REDACTED]

(11) Claimant alleges as disabling impairments: right shoulder pain, hepatitis C, nerve damage in his right hand, misaligned vertebra and neck pain, and side effects from chemotherapy.

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 March 2008. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that at a physical examination done on [REDACTED], claimant was well-developed, well-nourished, in no obvious distress.

Claimant was alert, well oriented and cooperative. His affect, dress and effort were all appropriate. Claimant's immediate, recent and remote memory was intact with normal concentration. Claimant's insight and judgment were both appropriate. Claimant's blood pressure in his left arm was 110/72. His pulse was 80 and regular. Respiratory rate was 18. Weight was 153 pounds. Height was 70" without shoes. Claimant's skin was normal. Claimant's eyes and ears; visual acuity in the right eye was 20/20 and left eye was 20/20 without corrective lenses. Pupils were equal, round and reactive to light. The claimant could hear conversational speech without limitation or aids. Claimant's neck was supple without apparent masses. Claimant's breath sounds in his chest were clear to auscultation and symmetrical. There was no accessory muscle use. Claimant's heart; there was regular rate and rhythm without enlargement. There was a normal S1 and S2. His abdomen; there was no apparently organomegaly or masses. In his vascular system; there was no clubbing, cyanosis or edema detected. The peripheral pulses were intact. There was no evidence of joint laxity, crepitance, or effusion. There was full fist and full grip strength bilaterally. Dexterity was unimpaired. The claimant could pick up a coin, button clothing and open a door. The claimant had no difficulty getting on and off the examination table. No difficulty heel and toe walking, no difficulty squatting and no difficulty hopping. Range of motion studies of the joints was full. In his neurological; his cranial nerves were intact. Motor strength was normal and tone appeared normal. Sensory was intact to light touch and pinprick. Reflexes were 2+ and symmetrical. Plantar response was flexor. Romberg testing was negative. Straight leg raise was accomplished at 90 degrees bilaterally. The claimant walked with a normal gait without use of an assistive device. The neurological examination and range of motion studies were normal. There appeared to be no evidence of muscle weakness.

Claimant had had some trauma to his right shoulder for which he had right shoulder pain.

Claimant's hepatitis C showed that the etiology was obscure, there was no specific treatment and examination was unremarkable. There were arthralgias of the hips and low back as well as neck.

The range of motion studies of these areas was normal. (Pages 3-5)

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 various areas of his body; however, there is no corresponding clinical finding that supports the reports of symptoms and limitation made by the claimant. 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 report 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 records are insufficient to establish that claimant has a severely restrictive physical impairment or combination of impairments which have lasted or will last the durational requirement of 12 months or more. 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.

Claimant testified on the record that he does cook every couple of days and cooks things like spaghetti. Claimant testified that he can walk a half a mile, stand for 10 minutes and sit for 15 to 20 minutes at a time. Claimant testified that he showers and dresses himself one time per week and that he ties his shoes and touches his toes and can bend at the waist but hasn't tried to squat. Claimant testified that the heaviest weight he could carry is 10 to 20 pounds and that he is right handed and that his left hand and arm is fine. Claimant testified that his level of pain on a scale from 1 to 10 without medication is a 9.5 and he doesn't take any medication. Claimant testified that he stopped drinking a 12-pack a week one year ago and he stopped smoking seven months ago and stopped using marijuana approximately a year before the hearing. Claimant testified that he sleeps one hour and watches movies and plays video games because he doesn't have much energy. Claimant testified that his hobby is building and repairing computers.

If the 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 testimony is that he can perform light work. Claimant's past relevant work was light work. This Administrative Law Judge finds that claimant could work as a head cook, cook, at [REDACTED] or as a pizza delivery person even with his impairments. Therefore, if claimant had not already been denied at Step 2, he would be denied again at Step 4 as the objective medical evidence on the record does not indicate that claimant cannot perform his past work.

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 testified that he has some nerve damage in his hands. Examples of light or sedentary (one-handed), unskilled jobs that claimant can do: are an usher, counter clerk, surveillance system monitor and a furniture/rental consultant in a retail trade. County business

patterns show that over 751,000 workers are employed in Michigan retail industries, indicating that such jobs exist in significant numbers in this region's economy. Over 30,000 workers are employed in Michigan in amusement and recreational services in which usher jobs are prevalent. Over 15,000 people are employed in public transportation and over 127,000 are employed in general merchandise stores, photo finishing, laboratories and photography supply stores, indicating such jobs exist in significant numbers in this region's economy.

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 testified on the record that he has misery and pain but no mental impairment but it is hard for him to think.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

There is insufficient objective medical/psychiatric evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. In addition, claimant was able to answer all the questions at the hearing and was responsive to all the questions. Claimant 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. Under the Medical-Vocational a younger individual (age 28), with a high school education and an unskilled work history, who is limited to light work is not considered disabled.

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. PEM, Item 261, page 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of light or sedentary work even with his impairments. The department has established its case by a preponderance of the evidence. Claimant is disqualified from receiving disability at Step 2, Step 3, Step 4, and Step 5.

Accordingly, the department's decision is AFFIRMED.

/s/

Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: May 6, 2009

Date Mailed: May 6, 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:

