

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: 2009-7519

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 4, 2009

Calhoun 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, an in-person hearing was held on February 4, 2009. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED]

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 June 26, 2008, claimant filed an application for Medical Assistance, State Disability Assistance and retroactive Medical Assistance benefits alleging disability.

(2) On July 16, 2008, the Medical Review Team denied claimant's application stating that claimant could perform his prior work.

(3) On July 18, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On October 14, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On January 7, 2009, the State Hearing Review Team again denied claimant's application and requested additional medical information.

(6) Additional medical information was submitted and sent to the State Hearing Review Team on March 11, 2009.

(7) On March 20, 2009, again the State Hearing Review Team again denied claimant's application and requested additional medical information.

(8) On April 20, 2009, new information was submitted and sent to the State Hearing Review Team a second time.

(9) On April 30, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work per 20 CFR 416.920(e) and then determined that the claimant retains the residual functional capacity to perform at least unskilled light work. The claimant's past work was unskilled sedentary work (office manager). The claimant retains the capacity to return to past relevant work.

(10) Claimant is a 55-year-old man whose birth date is [REDACTED]. Claimant is 6' tall and weighs 195 pounds. Claimant attended the 10th grade and has no GED. Claimant has basic math skills and is able to read and write, so-so, per testimony.

(11) Claimant last worked March 2007 for [REDACTED] on the assembly line assembling grocery carts.

(12) Claimant receives unemployment compensation benefits in the form of [REDACTED] every two weeks as the company went out of business in August 2008.

(13) Claimant alleges as disabling impairments: diabetes, heart disease, coronary artery disease, emphysema, asthma and an ulcer on his vocal chords for which he had surgery [REDACTED]

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 2007. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant presented with an acute inferior wall myocardial infarction on [REDACTED]. He was given Retavase immediately and then transferred to the [REDACTED]. He is a cigarette smoker with a family history which is positive for coronary disease. He has no history of hypertension or hyperlipidemia historically. He has a history of COPD (Chronic Obstructive Pulmonary Disease). Claimant's physical exam indicated that he was an ill-appearing gentleman complaining of chest pain with a 7 to an 8 out of 10 in pain. His head and neck revealed no abnormal JVD, carotids 2+. Pulses in the carotid, radial, femoral were 2+. A medical report from a [REDACTED] as of [REDACTED] indicates that on physical examination claimant's blood pressure was 111/63, pulse was 73 and regular. His weight was 192 pounds and his height was 71-3/4 inches. In his eyes, his pupils and irises were round, equal in size, symmetric, reactive to both light and accommodation. Discs size, C/d ratio, appearance and posterior segments appeared normal. No exophthalmos, strabismus, jaundice or papilledema. No conjunctivitis. Eyelid motion was normal. The summary of claimant's condition was that he was a 55-year-old Caucasian male who was addicted to cigarettes. He has clinical evidence of some incompletely treated asthma but was able to ambulate, dress and undress, walk in the office with no difficulty whatsoever. He had a history of myocardial infarction. He showed no signs of decompensation such as congestive heart failure. He was a diabetic but has sensation intact. His ears were normal. He had no otitis media, otitis externa, or perforations. No scars, lesions, masses, and overall appearance was normal. Hearing was intact. External auditory canals and tympanic membranes were normal. His nose appearance was normal. Septum was midline, without perforations. No

nasal polyps or mucosal swelling. Septum and turbinates were normal. There was no sinus tenderness. His mouth and throat, his hydration was good. No exudate. Buccal mucosa was free of canker sores. Oral mucosa, salivary glands, hard and soft palates, tongue, tonsils and posterior pharynx were normal. Tongue and soft palate were both midline. No salivary gland tenderness, enlargement or masses. Posterior pharynx was clear. No abnormalities of hard or soft palate. Lips were normal. Gums were not bleeding. Tonsils were normal. Teeth were present. In the neck, the overall appearance, symmetry, tracheal positions were normal and no crepitus, but there was some thickening and fullness of the soft tissue along both sides of his trachea. Supple with normal range of motion on flexion, extension, rotation and lateral bending. His voice was hoarse. The trachea was midline. No carotid bruit. No thyromegaly and no tenderness or nodules in isthmus or lateral lobes. No cervical lymphadenopathy, including no posterior auricular, occipital, superficial cervical, posterior cervical, supraclavicular, preauricular, tonsillar, submental, submaxillary, or deep cervical change lymphadenopathy. No increased venous pressure. No use of accessory muscles of respiration. His lungs revealed mild scattered wheezing bilaterally with diminished breath sounds bilaterally compatible with chronic obstructive pulmonary disease. Chest expands symmetrically with no use of accessory muscles of respiration. No intercostal retractions. Normal diaphragmatic movement. Normal chest percussion without dullness, flatness or hyperresonance. No tactile fremitus. In his cardiovascular area, heart tones S1 and S2 were present and regular rhythm. No rub, murmurs, thrills or clicks. No displacement of apical pulse. No right ventricular impulse. No thrills palpated in either left or right interspace. Normal carotid artery pulse amplitude. Abdominal aorta, free of bruit, size not palpably enlarged. Pulses intact in the upper and lower extremities. Femoral arteries of normal pulse, amplitude and free of bruits. Normal pedal pulse amplitude. No

clubbing or peripheral cyanosis. No edema or varicosities. His chest was symmetric with no skin retraction, no nipple discharge or inversion. No masses, lumps or tenderness in either breast. In the gastrointestinal, there were no pulsations, peristaltic waves, bulging flanks or suprapubic bulge. No bruits. No hernia. No hepatomegaly, splenomegaly, guarding, tenderness, masses, costovertebral angle tenderness, rebound tenderness or shifting dullness. No Murphy's sign. In the musculoskeletal extremities there was minimally decreased range of motion about the right shoulder from previous surgery otherwise normal joint examination of the joints in the normal upper and lower extremities including normal range of motion in the joints in the upper and lower extremities. No joint pain or contracture, misalignment, asymmetry, crepitation, defects, tenderness, masses, effusions, joint tenderness, crepitation, contracture, dislocation, subluxation or laxity, and with normal stability. No vertebral body tenderness. Gait and station was normal. Muscle strength and tone was normal. No muscle atrophy or abnormal movement. No flaccid, cogwheel, spastic or other abnormal muscle motion. Digits and nails were negative for clubbing, cyanosis, inflammation, petechiae, ischemia, infection or nodes. Skin, scar over right shoulder from previous rotator cuff tear surgery. No rashes, ulcers, malignant skin lesions, subcutaneous skin nodules, induration or skin tightening. No petechiae, ischemia or infection. No xanthomas. Palpation of skin and subcutaneous tissue were negative for induration, subcutaneous nodules, or tightening. In the neurological area, cranial nerves II through XII were intact. DTR intact in the upper and lower extremities. No abnormal reflexes or Babinski sign. Sensation to touch, pin, vibration and proprioception intact in the upper and lower extremities. Straight leg raising normal. Gait was normal. In the psychiatric areas, insight and judgment were normal. He was oriented to person, place and time. Mood and affect were normal. Recent and remote memory were intact. (Pages 1-3 of the new information)

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. In the instance case, claimant did testify that he is receiving [REDACTED] every two weeks in unemployment compensation benefits. In order to qualify for unemployment compensation benefits, a person must be monetarily eligible, must be totally or partially unemployed, must have approvable job separation and must meet the legal requirements including being physically and mentally able to work, being able for and seeking work, and filing his weekly claim for benefits on a timely basis.

There is insufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Based upon claimant's receipt of unemployment compensation benefits, he is not disabled. However, this Administrative Law Judge will proceed through the sequential evaluation process for the sake or argument.

In the instant case, there is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. Claimant has restricted himself from tasks associated with occupational functioning based upon his reports of pain (symptoms) rather than medical findings. However, claimant did testify on the record that he is single and lives alone in a house and he has no children under 18. Claimant does have a driver's license and drives four to five times per week about six miles to his mother's house. Claimant does cook one to two times per day and cooks things like hamburger, goulash and chili. Claimant does grocery shop one time per month and sometimes needs help carrying his bags. Claimant testified that he does clean his home by vacuuming, doing dishes and laundry and that he can walk 100 yards before he gets short of breath, stand for an hour, and has no limits on his ability to sit. Claimant testified that he is able to shower and dress himself and tie his shoes, but

cannot squat because it hurts his legs. Claimant cannot touch his toes and he can only bend at the waist slightly. The claimant testified that he can carry 25 to 50 pounds, but repetitively 10 to 15 pounds and that he is left handed and that he has constant pain in his arms and legs and left side. Claimant testified that his level of pain on a scale from 1 to 10 without medication is an 8 and with medication is a 4 and that he takes over-the-counter pain medication. Claimant testified that he does smoke a half a pack of cigarettes per day and his doctor has told him to quit but he is not in a smoking cessation program. He has cut down from two and a half packs a day.

Claimant testified that in a typical day he watches TV all day and then cleans his house and that since his heart attack he is getting worse because he is in constant pain on his left side and that his breathing is worse and he uses his nebulizer eight times a day. Claimant did have a heart attack [REDACTED].

This Administrative Law Judge finds that claimant's impairments do not meet duration. Even though he did have a heart attack and that condition was severe, claimant's current medical reports indicate that claimant's impairments have improved. Therefore, there is insufficient objective medical evidence in the record indicating claimant suffers a severely restrictive physical or mental limitation which would keep him from working for a period of 12 months or more. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental or physical 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 confessed ability to perform his past relevant work as he does receive unemployment compensation benefits. In addition, this Administrative Law Judge finds that there is insufficient objective medical evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work that he has engaged in in the past. Therefore, 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 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 also continues to smoke cigarettes even though he does have chronic obstructive pulmonary disease. Claimant is not in compliance with his treatment plan even though his doctor has told to quit smoking.

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

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 substantial relief from his over-the-counter pain medication. 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.

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: May 27, 2009

Date Mailed: May 27, 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:

