

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: 2010-1756

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

November 25, 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 November 25, 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 October 4, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On July 17, 2009, the Medical Review Team denied claimant's application stating that claimant's impairments were non-exertional and that he could perform other work.

(3) On August 12, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On August 24, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On October 19, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of unskilled work per 20 CFR 416.968(a) and commented that this may be consistent with past relevant work. However, there is no detailed description of past work to determine this.

(6) Claimant is a 55-year-old man whose birth date is [REDACTED]. Claimant is 6' 3" tall and weighs 248 pounds. Claimant attended two years of college and studied liberal arts and is able to read and write and does have basic math skills.

(7) Claimant last worked 2001 in a restaurant as a kitchen helper. Claimant has also worked as blueprint operator. Claimant was incarcerated from 2001 to 2006 where he was kitchen help and he currently panhandles and goes to the soup kitchen for meals.

(8) Claimant alleges as disabling impairments: hypertension, hernia, polyps in his head, depression, water in his eyes, coughing up crud, chronic lung disease, narcolepsy, enlarged heart, and back, feet, and leg pain, as well as depression 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 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 at least 2001. Claimant was not gainfully employed in 2001-2006 but was kitchen help while he was incarcerated. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a mental status examination of [REDACTED] indicates that claimant was 6' 3" tall and weighed 243 pounds. He was adequately dressed and groomed. He had decreased eye contact and his gait was slow but normal. In his attitude and behavior he had good contact with reality. His insight was fair. The claimant was relaxed and pleasant. The claimant had decreased activity and decreased motivation. The claimant had no tendency to minimize symptoms. His stream of mental activity

was spontaneous, slow, circumstantial, organized, and he had whispering speech. His mental train of thought content he denied any hallucinations. He had no paranoia. No suicidal ideation, plan, or attempts. No mood swings or gross delusions. He slept 3-4 hours at a time and he was tired. He was depressed, anxious but friendly, and his affect was blunted. The claimant was oriented to time, place, and person. He was able to recall 2/5, 2/5, and 2/3 items. He knew his birth date. When asked to name the past few Presidents, the claimant stated, Obama, Bush, and Kennedy. He was slow in answering questions. In calculations he stated $5+4=9$ and $6 \times 7=38$. When asked to interpret the proverb, the grass is greener on the other side of the fence, the claimant stated, I don't know. When asked to interpret the proverb, don't cry over spilled milk, the claimant stated, if you spill it don't worry. For similarities and differences, when asked the similarity and differences between a bush and a tree, the claimant stated, they both are green, and he did not know the difference. When he was asked what he would do if he found a stamped, addressed envelope, he stated, put it in the mailbox. He was diagnosed with major depressive disorder, recurrent in partial remission, cardio obstructive pulmonary disease, hypertension, enlarged heart, narcolepsy, homeless, has been in prison, and his GAF was 55 and his prognosis was fair. He would not be able to manage his own funds. (pp. 7-8)

A Medical Examination Report of [REDACTED] indicated that claimant was 6' 3" tall and weighed 240 pounds. His blood pressure was 153/84. He was right-hand dominant. He was normal in all examination areas and the clinical impression was that claimant was stable. He could frequently carry 50 pounds or more. He did not need assistive devices for ambulation and he could use both upper extremities for simple grasping, reaching, pushing/pulling, and fine manipulating and could operate foot and leg controls with both feet and legs. He had limited comprehension and social interaction. (pp. 20-21)

A [REDACTED] medical status exam indicates that claimant was diagnosed with schizoaffective disorder, occupational problems, housing problems, and economic problems. His GAF was 58. He was moderately limited in most areas and only markedly limited in the ability to maintain attention and concentration for extended periods and the ability to work in coordination or proximity with others without being distracted by them. (p. 24) Claimant was also markedly limited in the ability to accept instructions and respond appropriately to criticism from supervisors. (p. 25)

A [REDACTED] Medical Examination Report indicates that claimant was normal in all areas of examination except that he was diagnosed with narcolepsy and had some venous insufficiency as well as chronic lung insufficiency. His blood pressure was 134/86. The clinical impression was that he was stable and he had no physical limitations. He could frequently lift 50 pounds or more, stand or walk about 6 hours in an 8-hour day and sit about 6 hours in an 8-hour day. He could use both upper extremities for simple grasping, reaching, pushing/pulling, and fine manipulating and he could operate foot and leg controls with both feet and legs. He was determined to be unable to drive because he did have narcolepsy. (p. 46-47)

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 is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent

with a deteriorating condition. In fact, claimant's medical reports indicate that he does not have any physical restrictions. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

Claimant testified on the record that he does have depression and anxiety.

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 mental limitations resulting from his reportedly depressed or anxious state. The Mental Residual Functional Capacity Assessment in the record indicates that claimant is only moderately limited in most areas. 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 relevant work. Claimant's past relevant work was as kitchen help. 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 at a restaurant or as kitchen help even with his impairments. 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. 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 at least light or sedentary work even with his impairments.

Claimant did testify that he takes the bus when he has money and he walks to take the bus. Claimant testified that he can stand for a few minutes at a time and can sit for an hour to an hour and a half. Claimant can walk for 2-3 hours. The claimant's level of pain on a scale from 1 to 10 without medication is a 9 and with medication is a 6/7. Claimant testified that the heaviest weight he can carry is 20 pounds. Based upon claimant's testimony and the objective medical evidence in the record, claimant is disqualified from receiving disability at Step 5.

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, 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.

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: February 26, 2010

Date Mailed: March 1, 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.

LYL/vmc

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