

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: 2010-1888
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 April 30, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On August 17, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical Vocational Rule 202.22.

(3) On August 20, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On August 30, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On October 20, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The claimant retains the ability to perform light, exertional tasks. Despite the fact that the claimant benefits from the use of an assistive device, the evidence supports that the claimant would still retain the ability to function well within the limits of light, exertional tasks. Denial of application to other work. The claimant is limited to perform light, exertional tasks. Vocational Rule 202.21 is used as a guide. MA-P, retroactive MA-P, and SDA are denied by this decision. Listings 1.03, 1.04, 4.04, 9.08, 12.04, and 12.06 were considered in this decision. (Agency Exhibit 102)

(6) Claimant is a 37-year-old man whose birth date is [REDACTED]. Claimant is 6' 3" tall and weighs 225 pounds. Claimant attended the 9th grade and has no GED but is able to read and write and does have basic math skills.

(7) Claimant last worked in 2008 as a head cook. Claimant has worked in kitchen supervision at a bar and grill, and he's worked as a cook for approximately 12 years and as an assistant manager at [REDACTED] for 10 years.

(8) Claimant alleges as disabling impairments: hypertension, diabetes mellitus, nerve problems, three gunshot wounds, anxiety, depression, panic attacks, and arthritis. Claimant had three bullets in his left leg and he was shot approximately 13 years ago and he stated that he does have severe pain.

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

The objective medical evidence on the record indicates that claimant alleges disability secondary to hypertension, diabetes, arthritis, gunshot wounds, anxiety, depression, and panic attacks. Pages 21 and 44 are from the claimant's treating physician that acknowledges that the claimant has some psychiatric issues but also notes that on two separate occasions that there are

no limitations associated with these issues. Hypertension was fairly well controlled at the time of examination. Claimant is insulin-dependent related to his diabetes. A note indicates a history of gunshot wounds and alleged arthritis. Page 44 of the older treating source statement of the claimant abilities and page 6 is a purchase examination. While this examination does note that there is diabetic neuropathy based upon claimant's statements and the medication he is currently on, there was no evidence of the same during the examination. The consultative doctor and treating physician both note the use of an assistive device, a cane which is reasonable for balance.

An [REDACTED], Medical Examination Report from the [REDACTED] indicates that the claimant was well-developed, well-nourished, cooperative, and in no acute distress. He was awake, alert, and oriented x3. He was dressed appropriately and answered questions fairly well. He was 6' 2" tall and weighed 222 pounds. His pulse was 80. Respiratory rate was 16. Blood pressure was 144/90, 150/98, and 146/82. His visual acuity without glasses was 20/25 on the right and 20/25 on the left. His HEENT was normocephalic and atraumatic. Eyes: Lids were normal. There was no exophthalmos, icterus, conjunctiva, erythema, or exudates noted. The PERRLA, extraocular movements were intact. Ears: No discharge in the external auditory canals. No bulging erythema. No perforation of the visible tympanic membrane noted. Nose: There was no septal deformity, epistaxis, or rhinorrhea. Mouth: The teeth were in fair repair. The neck was supple. No JVD noted. No tracheal deviation. No lymphadenopathy. Thyroid was not visible or palpable. ENT: External inspection of the ears and nose revealed no evidence of acute abnormality. Respiratory: The chest was symmetrical and equal to expansion. Lungs: Lung fields were clear to auscultation and percussion bilaterally. There were no rales, rhonchi, or wheezes noted. No retractions noted. No accessory muscle usage noted. No cyanosis

noted. There was no cough. Cardiovascular: There was normal sinus rhythm, S1, and S2. No rubs, murmur, or gallop. Gastrointestinal: Abdomen was soft, benign, and non-distended, non-tender with no guarding, rebound, palpable masses. Bowel sounds were present. Liver and spleen were not palpable. Skin: There were no significant rashes or ulcers. Extremities: There was no obvious spinal deformity, swelling, or muscle spasm noted. Pedal pulses were 2+ bilaterally. There was no calf tenderness, clubbing, edema, varicose veins, brawny erythema, stasis dermatitis, chronic leg ulcers, or muscle atrophy or joint deformity or enlargement noted. There was mild tenderness to palpation of the lower lumbar area. Bones and Joints: The claimant did have a cane but did not use it during the examination. He had a limp on the left side. Stance was normal. He was able to get on and off of the table. The tandem walk was done slowly. He was able to do heel walk but stated he was unable to do toe walk. He was able to squat 50% of distance and recover and bend to 50% of the distance and recover. Grip strength was equal bilaterally. The claimant was right-handed. Gross and fine dexterity appeared to be bilaterally intact. Abduction of the shoulders was 0-150 degrees. Flexion of the knees was 0-150 degrees on the right and 0-100 degrees on the left. Straight leg raising while lying was 0-50 degrees and while sitting was 0-90 degrees. Neurologic: The claimant was alert, awake, and oriented to person, time, and place. Cranial Nerve II: Vision as stated in vital signs. III, IV, VI: No ptosis, nystagmus. PERRLA. Pupils 2 mm. bilaterally. V: No facial numbness. Symmetrical response to stimuli. VII: Symmetrical facial movements noted. VIII: Can hear normal conversation and whispered voice. IX, X: Swallowing intact. Gag reflex intact. Uvula midline. XI: Head and shoulder movement against resistance was equal. XII: No sign of tongue atrophy. No deviation with protrusion of tongue. Sensory Functions: Intact to sharp and dull gross testing. Motor Exam: Revealed fair muscle tone without flaccidity, spasticity, or paralysis. The impression was

hypertension. Blood pressure was under fair control, slightly elevated on exam day. Claimant had a secondary diagnosis was diabetes and has had a history of diabetes since 2004 with blood sugars ranging from 75-230, insulin dependent. He also had diabetic neuropathy, current on Gabapentin and Lyrica. The claimant has a history of arthritis status post gunshot wound at least 7-9 years ago. He continues to have pain and a limp on the left side. He used a cane for balance and support. The range of motion sheet was included for review. (pp. 8-9)

A [REDACTED] determined that claimant had normal cervical spine, flexion, extension, and rotation. The lumbar spine had normal range of motion. Shoulder there was normal range of motion. Elbow normal range of motion. Ankles and wrists had normal range of motion as well as the hands and fingers. (pp. 10-11)

A Medical Examination Report dated [REDACTED] indicates that the clinical impression is that claimant is stable and that he could stand or walk less than 2 hours in an 8-hour workday but sit about 6 hours in an 8-hour workday. Claimant could occasionally lift 25 pounds or less, but never lift 50 pounds or more. Claimant used a cane for walking. Claimant could do simple grasping, reaching, pushing/pulling, and fine manipulating with both upper extremities. Claimant was 74" tall and weighed 228 pounds. His blood pressure was 128/80. (pp. 43-44)

Claimant testified on the record that he does cook in a microwave mostly and that he does clean his room by making his bed and wiping the dresser down. Claimant testified that he plays video games or watches television 5-6 hours a day as a hobby. Claimant testified that he can stand for 10 minutes, sit for 20 minutes at a time, and walk a half a block. Claimant testified he cannot squat or bend at the waist. Claimant is able to shower and dress himself but cannot tie his shoes or touch his toes. Claimant testified that he has muscle spasms in his back and his knee hurts because he has bullets behind his left knee. Claimant testified that he is right-handed and

does have arthritis in his hands. Claimant testified that the heaviest weight he can carry is 50 pounds but on a repetitive basis he can carry 10 pounds. Claimant testified that he does not smoke and stopped smoking marijuana 2 years ago.

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. Although claimant was shot about 13 years ago and he does retain some bullets in his left leg behind his left knee, he was able to work up until 2008 with that condition. Claimant has complaints of pain in multiple areas of his body; however, there are insufficient objective corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. There are no laboratory or x-ray findings listed. The form indicates that assistive devices may be needed for walking in the form of a cane, but claimant did not use a cane at all at his examination and only used a cane for balance. The clinical impression was 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, the claimant has restricted himself from tasks associated with occupational functioning based upon his reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that claimant has met the evidentiary burden of proof can be made. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers mental limitations resulting from his reportedly depressed state. There is no Mental Residual Functional Capacity Assessment in the record.

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).

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. 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. 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 work. Claimant's past work was light as a cook and a kitchen supervisor. 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 which he has engaged in, in the past.

Therefore, if claimant had not already been denied at Step 2, he would again be denied at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when

it involves sitting most of the time with some pushing and pulling of arm or leg controls....

20 CFR 416.967(b).

Claimant has submitted insufficient objective medical evidence that he lacks the residual functional capacity to perform some other less strenuous tasks than in his prior employment or that he is physically unable to do light or sedentary tasks if demanded of him. Claimant's activities of daily living do not appear to be very limited and he should be able to perform light or sedentary work even with his impairments. The claimant's testimony as to his limitations indicates that he should be able to perform light or sedentary work.

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 guidelines, a younger individual (age 37), with a less than 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, 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: March 8, 2010

Date Mailed: March 8, 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.

2010-1888/LYL

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:

