

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: 2010-2067
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 18, 2009
Jackson 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 18, 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 February 17, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On July 23, 2009, the Medical Review Team denied claimant's application stating that claimant could perform his prior work.

(3) On July 28, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On August 3, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On October 26, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: Claimant's past work has been light, simple and repetitive. The claimant retains the ability to perform duties associated with past relevant work. MA-P, Retroactive Medicaid-P, SDA were denied by this determination. Listings 4.04, 4.06, 12.04, and 12.06 were considered in this determination.

(6) The hearing was held on November 18, 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 January 4, 2010.

(8) On January 7, 2010, the State Hearing Review Team again denied claimant's application stating that: A mental status in August 2009 showed the claimant's thoughts were logical, organized, simple and concrete. He was mildly depressed and mildly anxious. His thought content was appropriate and there was no apparent thought disorder. His blood pressure was elevated without evidence of end organ damage. He had mild aortic valve regurgitation without limitation. The new information submitted is not significantly change or alter the previous decision. The claimant retains the residual functional capacity to perform simple unskilled work. The claimant's past work was unskilled, therefore, the claimant retains the capacity to perform his past relevant work. MA-P is denied per 20 CFR 416.920(e). Retroactive

MA-P was considered in this case and is also denied. SDA is denied per PEM 261 due to the capacity to perform past relevant work.

(9) Claimant is a 53-year-old man whose birth date is [REDACTED]. Claimant is 5'10" tall and weighs 145 pounds. Claimant is a high school graduate. Claimant is able to read and write and can count money and has basic math skills.

(10) Claimant last worked January 28, 2008, doing janitorial work. Claimant has also worked at the [REDACTED], in a factory and as a cook at [REDACTED]

(11) Claimant alleges as disabling impairments: hypertension, aortic valve disorder, tremors, depression, anxiety, depression, hearing voices.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

The Medical Assistance (MA) program is established by 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant is not engaged in substantial gainful activity and has not worked since January 2008. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a report from claimant's therapist indicates that claimant just recently disclosed any auditory hallucinations. He reports that he is hearing voices and which appear to be making negative commentary and are upsetting to him. The claimant went to the emergency room and is documented on page 247, and left with a stable condition with a diagnosis of sinusitis. Claimant's blood pressure was 140-92 without evidence of **end or organ** damage. Noted for mild aortic valve regurgitation without limits. On page 330 is a copy of purchased examination with diagnosis of adjustment disorder with depressed and anxious mood, developmental reading and math disorder and cognitive disorder. Claimant complains that his medication makes him feel like zombie and claimant states that he is compliant. His activities are good and his memory and thoughts are intact. On a Mental Status examination, claimant responded to instructions well. He responded to positive criticism well. He required no special assistance to complete the examination process. Overall the claimant was cooperative, motivated and verbally responsive and attempted all tasks and worked diligently. His eye contact was good. His thoughts were logical, organized, simple, and concrete. The content of communication is age appropriate. His mood was mildly depressed and mildly anxious. His contact with reality was good. His self esteem was described as low. His motor activity was in normal limits. He did not appear to engage in any exaggeration or minimization of symptomology. His affect was blunted but occasionally pleasant. His thought content was appropriate with no apparent thought disorder. He denied auditory and visual hallucinations, delusions, persecutions, obsessions, thoughts of being controlled by other, unusual powers, or suicidal or homicidal ideations. When asked the year, the claimant said "2009". When asked the

month the claimant said, “June”. When asked the day of the week the claimant replied, “Thursday”. When asked the date of birth, the claimant said “10/21/56”. When asked the place the claimant said, “a doctor’s office”, and when asked to state his full name the claimant replied, “Ricky Delano Wilson”. The claimant repeated 5 numbers forward, and 3 numbers backward. When asked to name an early teacher and grade, the claimant replied, “Ms. Hart, 5th grade art teacher”. After 3 minutes, when asked to recall “desk, bike, hammer, the claimant responded, “desk, bike and hammer”. When asked to name the current President, the claimant Obama. When asked to name the Governor of Michigan, the claimant said, “I can’t think of her name”, and when asked to name 4 famous people, the claimant said, “Michael Jordan, Magic Johnson, Clint Eastwood, and John Wayne.” When asked to name 4 large cities, the claimant said, “New York City, Chicago, Atlanta, and Miami.” When asked to name a current event, the claimant said “baseball”. When asked to spell world backwards, the claimant replied, d-l-r-o-w. The claimant was not able to subtract 7’s from 100 accurately supporting 4. He was able to subtract 3’s from 100 accurately to 76. When asked about don’t cry over spilled me, he replied, “It’s done, don’t cry, clean it up”. When asked to respond to, the grass is greener on the other side, he responded “what looks green on the other side may not look green here, you just think it’s green.” (p328)

When asked how a tree and a bush were alike, the claimant said “green”, and when asked how they were different, he said “one is bigger”. When asked what he would do if he found a stamped, sealed envelope on a sidewalk, the claimant said mail it. When asked what he would do if he smelled smoke in a theatre, the claimant said “he would leave”. Claimant scored a reading grade level of 2 and arithmetic grade level of 3. He was not seen as a good benefits manager. Claimant either had no impairment, or mild impairment in most areas and only had

moderate impairment in his ability to interact appropriately with the public and the ability to work in fast paced, time based environments. Based on the examination claimant was able to understand, retain and follow simple instructions and generally restricted to performing simple, routine, repetitive, concrete, and tangible tasks. He was diagnosed with adjustment disorder and with depressed anxious mood, developmental reading disorder, developmental arithmetic disorder, and cognitive disorder. His axis was a GAF of 58. (pp 326-327, August 31, 2009) On an office visit on April 23, 2009, claimant's temperature was 97.5, pulse was 88, blood pressure 140/92, height 70' tall, and weight 145 pounds. His BMI calculation is 20.80. He was well nourished, his hearing was grossly intact, tympanic membranes normal. His naris has discharge that was clear, had hypertrophy. Nasal mucosa edema had no swelling or tenderness over right sinus. No swelling or tenderness over the left sinus. Cranial nerves 2-12 were grossly intact. There was no motor weakness. Balance and gait were intact. There was no stiff neck.

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. Claimant testified that he can stand for 10 minutes, sit all day long, walk 20 minutes, squat, bend at the waist, shower and dress himself, touch his toes and tie his shoes. Claimant testified that his level of pain on a scale from 1-10 is a 7 without medication and an 8 with medication. Claimant also testified that he is right handed and that his hands swell and shake and his legs and feet shake. Claimant testified that the heaviest weight that he can carry is 20 pounds and that he does smoke a half a

pack of cigarettes a day and his doctors told him to quit and he is not in a smoking cessations program. Claimant does drink a 12 ounce beer per day. He stated that he was in the hospital last February because he tried to commit suicide.

There are no laboratory or x-ray findings listed in the file of a physical impairment which would keep claimant from working at any job. Claimant does not require assistive devices for ambulation. There is no clinical impression is that claimant is deteriorating. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, claimant has restricted himself from tasks associated with occupational functioning based upon his reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that claimant has met the evidentiary burden of proof can be made. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers severe mental limitations resulting from his reportedly depressed state. 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 a mental residual functional capacity assessment in the record which indicates that claimant is only mildly impaired in some areas and only moderately impaired in 2 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 of 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. This Administrative Law Judge finds that claimant's past relevant work was light work. As a person doing janitorial work, or working for Goodwill industries does not require extreme physical exertion, there is insufficient medical evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work in which he has engaged in, in the past. Therefore, if claimant had not already been denied at Step 2, he would be denied again at Step 4.

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

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

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the

national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

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

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

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

Claimant has submitted insufficient objective medical evidence that he lacks the residual functional capacity to perform some other less strenuous tasks than in his prior employment or that he is physically unable to do light or sedentary tasks if demanded of him. Claimant's activities of daily living do not appear to be very limited and he should be able to perform light or sedentary work even with his impairments. Claimant has failed to provide the necessary objective medical evidence to establish that he has a severe impairment or combination of impairments which prevent him from performing any level of work for a period of 12 months.

There is insufficient objective medical/psychiatric evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. Claimant'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 actually testifies that his pain goes up when he takes pain medication, which is not credible.

Claimant does continue to smoke cigarettes even though his doctor has told him to quit. He is not in a smoking cessation program. Claimant is not in compliance with his treatment program.

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. BEM, Item 261, p. 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

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: April 27, 2010

Date Mailed: April 28, 2010

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

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