

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: 2010-27271

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 28, 2010

Bay 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 April 28, 2010. 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 September 8, 2009, claimant filed an application for Medical Assistance and State Disability Assistance and retroactive Medical Assistance benefits alleging disability.

(2) On January 25, 2010, the Medical Review Team denied claimant's application stating that claimant's impairment's are non-extertional.

(3) On January 29, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On February 4, 2010, claimant filed a request for a hearing to contest the department's negative action.

(5) On March 30, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: Claimant is capable of performing light work in the form of 20 CFR 416.967(b) and unskilled work per 20 CFR 416.968(a) pursuant to Medical Vocational Rule 202.20. The State Hearing Review Team that this may be consistent with past relevant work. However, there is no detailed description of past relevant work to determine this. In lieu in denying benefits is capable of performing past work a denial to other work based on a Vocational Rule will be used.

(6) Claimant is a 45-year-old man whose birth date is [REDACTED] Claimant is 5'10" tall and weighs 180 pounds. Claimant has a GED. Claimant is able to read and write and does have basic math skills.

(7) Claimant last worked in 1984 as a construction helper. Claimant has also worked in a [REDACTED] factory sorting [REDACTED] Claimant was in [REDACTED] from [REDACTED] and was a porter when he was in [REDACTED] doing janitorial work.

(8) Claimant alleges as disabling impairments: back, knee and shoulder pain, anxiety, 2 herniated discs, and bulging discs from the back and neck, as well as paranoia, bi-polar disorder and post traumatic stress disorder.

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 1984. Claimant also did work in [REDACTED] as a porter, so this Administrative Law Judge will count that as gainful employment. However, claimant is not currently involved in substantial gainful activity and is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a Michigan Medical Consultants examination of December 22, 2009, states that the claimant is cooperative in answering questions and following commands. He appears his stated age. The claimant immediate, recent and remote memory is intact with normal concentration. The claimant's insight and judgment are both appropriate. The claimant provides a good effort during the examination. Blood pressure on the left arm was 120/80, pulse was 80 and regular, respiratory rate was 16, weight was 187, height was 70" without shoes. On the skin there was an 8 inch

incision over the anterior left knee, with synovial thickening. Eyes and ears, the visual acuity in the right eye was 20/40 and the left eye 20/70 without corrective lenses. Pupils were round, equal and reactive to light. The claimant could hear conversational speech without limitation or needs. The neck was supple without masses. In the chest the breath sounds were clear to auscultation and symmetrical. There is no accessory muscle use. In the heart there was regular rate rhythm without enlargement. There was a normal S1 and S2. In the abdomen, there was no organomegaly or masses. Bowel sounds were normal. In the vascular area, there was no clubbing or cyanosis appreciated. There was no edema present. The peripheral pulses were intact. In the musculoskeletal area, there was no evidence of joint laxity, crepitation or effusion. Grip strength remained intact. Dexterity was unimpaired. The claimant could pick up a coin, button clothing, and open a door. The claimant had no difficulty getting on and off the examination table, mild difficulty heel and toe walking, moderate difficulty squatting and was unable to hop. Straight leg raising was negative. There was no paravertebral muscle spasm. Range of motion studies was normal and full in all areas. In the neurological area, the cranial nerves were intact. Motor strength and tone were normal. The sensory was intact to light touch and pinprick. There were areflexia in the left knee. Romberg testing is negative. The claimant walks with a moderate left limp without the use of an assistive device. Claimant was diagnosed with degenerative arthritis and the most significant was his left knee where he had total arthroplasty. His range of motion was diminished due to surgery. Long term progress was fair. He did have a history of Hepatitis C, but there was no evidence of hepatosplenomegaly. (pp 6-8)

A psychological evaluation dated December 17, 2009, indicates that claimant's thoughts were spontaneous and well organized and there were no problems in pattern or content of speech. He denied the presence of any auditory or visual hallucinations, delusions, or obsessions,

persecutions or unusual powers. He denied feelings of worthlessness or suicidal ideation. There were no fluctuations in his weight over the past year. He denied any sleep disturbances.

Throughout the evaluation his emotional reaction appeared normal. He was oriented x3. He correctly stated the year was 2009 and his current address was [REDACTED]

He was able to recall 5 digits forward and 3 digits backward. He was able to only recall 1/3 objects after a 3 minute interval. He named the current presidents as Barack Obama, and the previous presidents as George W. Bush and Clinton. He correctly stated his birth date is [REDACTED]

[REDACTED] When asked to name 5 large cities, he named Houston, New York, Los Angeles, Daytona, and New Orleans. He named current famous peoples as Tiger Woods and Bill O'Reilly. When asked to identify current events, he identified Tiger Woods's affairs and the health care debate. Performance on serial 7's was as follows: 100, 93, 86, 79, and 72.

Performance on single digit calculations were as follows: $9+8=17$, $12-7=5$, $5*5=25$. He incorrectly calculated $36/4=6$. He was unable to calculate $8*7$. When asked the meaning of the say the grass is greener on the other side of the fence, he replied, the guy takes care of his lawn better than the next guy. When asked the meaning of the saying, don't cry over spilled milk he replied, don't worry about it. When asked how a bush and a tree were alike he replied, they both have leaves. When asked how they were different he replied one has bigger leaves than the other. In his judgment, when he was asked what he would do with a stamped addressed envelope lying on the sidewalk, he said that he would leave it there. When asked what he would do if he discovered fire in a theatre, he responded get the hell out of there. He was diagnosed with adjustment disorder with anxiety, personality disorder and his prognosis was guarded. The psychologist, indicated that at this time he needs diagnostic criteria for an anxiety disorder that appears to be related to his maladjustment after his release from [REDACTED] He was recently

released from an 11 year [REDACTED] term and he fears someone is going to hurt him. He reported an ongoing struggle with bi-polar disorder, but there indication of depressive or manic episodes. He reported that he is overwhelmed by being out of prison and wishes he could go back. He is currently tethered to his home under conditions of his release from incarceration. In was encouraged to pursue activities such as on-line education. (pp 10-12) This Administrative Law Judge did consult all 109 pages of medical reports in the file and did consider all 109 pages of medical information contained in the file.

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 are no laboratory or x-ray findings listed in the file. The clinical impression is 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, 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.

Claimant alleges the following disabling mental impairments: depression, bi-polar disorder, paranoia, and post traumatic stress disorder.

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 severe mental limitations. There is no mental residual functional capacity assessment in the record. However, there is a psychological examination. There is insufficient 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 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. 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 relevant work. There is no 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. The claimant's testimony as to her limitations indicates that he should be able to perform light or sedentary work.

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 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. 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 45), with a high school education and an unskilled work history who is limited to light work is not considered disabled.

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. 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.

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that claimant was not eligible to receive Medical Assistance and/or State Disability Assistance.

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 24, 2010

Date Mailed: May 25, 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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