STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[redacted]

Reg. No: 2010-36727
Issue No: 2009; 4031
Case No: [redacted]
Load No:
Hearing Date:
September 28, 2010
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 September 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 April 14, 2010, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On May 6, 2010, the Medical Review Team denied claimant's application stating that claimant's impairments were non-severe.

(3) On May 13, 2010, the department caseworker sent claimant notice that his application was denied.

(4) On May 17, 2010, claimant filed a request for a hearing to contest the department's negative action.

(5) On June 10, 2010, the State Hearing Review Team again denied claimant's application stating that claimant had non-severe impairments or conditions pursuant to 20 CFR 416.920(c).

(6) Claimant is a 51-year-old man whose birth date is [redacted]. Claimant is 6' tall and weighs 155 pounds. Claimant attended the 10 grade and does not have a GED. Claimant is able to read and write and can add subtract and count money.

(10) Claimant last worked in a restaurant as a cook. Claimant has also worked installing cable, maintenance and landscaping.

(11) Claimant alleges as disabling impairments: dislocated disc/fractured back, hypertension, depression, arthritis in the arms and hands.

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 impair ments do not signific antly limit physica l or mental ability to do basic work activities, it is not a severe impairment(s) and disab ility does not exist. Age, education and work ex perience will not be c onsidered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medic al signs and laboratory findings wh ich demonstrate a medical im pairment.... 20 CFR 416.929(a).

> ...Medical reports should include –
>
> (1) Medical history.
>
> (2) Clinical findings (such as the results of phy sical or mental status examinations);
>
> (3) Laboratory findings (such as blood press ure, X-rays);
>
> (4) Diagnosis (statement of disease or injury based on it s signs and symptoms).... 20 CFR 416.913(b).

In determining dis ability under the law, the abili ty to work is measured. An indiv idual's functional capacity for doing bas ic work activiti es is ev aluated. If an individual has the ability to perform basic work activities with out signific ant 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 <u>not</u> 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 2006. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant testified that his mother was supporting him until December 2009, when she died. Claimant lives in his mothers house with his niece and he has no lights or gas only running water. Claimant is single with no children under 18 and he has no income but does receive Food Assistance Program benefits and the Adult Medical Program. Claimant testified that he does not have a driver's license because he has not paid his fines but that he does take the bus 3 times per month and usually takes it to appointments. Claimant does grocery shop 1 time per month and usually needs help picking up heavy items. Claimant testified that he does vacuum, does the dishes and laundry and he watches TV 12 hours per day. Claimant testified that he can stand for 10-15 minutes, sit for 10 minutes, walk one block but he cannot squat. Claimant testified that if sitting down he can bend at the waist and he can tie his shoes as well as shower and dress himself but not touch his toes. Claimant testified that he has arthritis in his knees. Claimant testified that his level of pain on a scale from 1-10 without medication is an 8 and with medication is a 6. Claimant testified that he is right handed and he has arthritis in his hands and arms and his legs and feet are fine except he does have some pain. Claimant testified that the heaviest weight that he can carry is 5 pounds and he does smoke a half pack of cigarettes per day and his doctor has told him to quit and he is not in a smoking cessation program. Claimant testified that on a typical day he watches TV, sits on the front porch, takes a nap and takes his medication.

A psychiatric evaluation conducted December 17, 2009, indicates that he is 5'10" tall and weighs 168 pounds. He was fairly dressed and fairly groomed. He had good eye contact. He was walking with a cane and had a limping gait. The claimant was in good contact with reality. His insight was fair. He had decreased motivation and a low self esteem. He had a tendency to minimize symptoms. He was relaxed. His stream of mental activity was spontaneous, organized with no pressure or speech. He denied any hallucinations or paranoia. No suicidal ideation, plan or attempt. No mood swings and no gross delusions. He sleeps 4-6 hours. Back pain is somatic complaint. His emotional reaction is depressed, anxious and friendly. His affect was normal. He was oriented to time, person and place. He was able to recall 3-5 items in recent memory

and 2-3 items in rec ent memory. When a sked to name the current and past few presidents the claimant said Obama and Bush. His birth date was stated correctly. When asked to name 5 large cities, the claimant said Detroit. He was only able to name famous people. Calc ulations are 5+4=9, 6*7=he stated he 's not good at math. When asked to interpret the following proverb, the grass is greener on t he other s ide of the fence, the claimant s aid "I don't know." W hen asked about, don't cry over spilled milk, the claimant stated that y ou will get more. When asked abo ut the simi larities an d difference between a bush and a tree, the clai mant said that they both were green. When asked what he would do if he f ound a stamped, addressed envelope, the claimant s aid that he would put it in a mailbox. He had no head injuries and no seizures. The medic al source opinion indi cated that claimant seemed to be able to understand, retain and follow s imple instructions. He was [redacted] to work that involves brief interactions with co-workers, supervi sors and the public. He was diagnosed with adjustment disorder and press ty pe chronic and mild, anxiety disorder NOS, and a GAF of 55. His prognosis was fair and he would not be able to manage his own funds (pp. 28-30).

A Medical examination r eport contained in the file indic ates that claimant was normal in all areas of examin ation. His blood pressure was 123/70 and he was right hand dominant. His v isual acuity wa s 20/20 in both eyes. T he clin ical impression is that he was stable and he c ould occ asionally carry 20 pounds or less but never carry 25 pounds or more. He could stand or walk at least 2 hours in an 8 hour work day and he had no mental limitations. The medical examination report was dated April 16, 2010.

At Step 2, claimant has the burden of proof of establis hing that he has a severely restrictive physical or mental impairment that has lasted or is e xpected to last for th e 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 clinic al findings that suppor t the reports of symptoms and limitations made by t he claimant. There ar e no labor atory or x-ray findi ngs listed in t he file. T he clinical imp ression is that cl aimant 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 restricte d himself from tasks associated with occupational functioning based upon his r eports of pain (sympt oms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that claimant has met the evidentiary burden of pr oof can be made. This Administrative Law Judge finds that the medical record is insu fficient to establish that claim ant has a severely restrictive physical impairment.

Claimant alleges the following disabling mental impairments: depression, grief, lack of concentration.

For mental disorders, severity is assessed in terms of the functional limitatio ns imposed by the impairment. Functional limitations ar e assessed using the criteria in paragraph (B) of the listings for mental di sorders (descriptions of restrict ions 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. 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 his 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.

It should be noted that claimant continues to smoke despite the fact that his doctor has told him to quit. Claimant is not in compliance with his treatment program.

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

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: October 13, 2010

Date Mailed: October 13, 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/alc

cc: [redacted]