

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

IN THE MATTER OF:



Reg. No: 2010-43857
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 1, 2010
Sanilac 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 1, 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 January 21, 2010, claimant filed an application for Medical Assistance, State Disability Assistance and retroactive Medical Assistance benefits alleging disability.
- (2) On April 12, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work.
- (3) On April 15, 2010, the department caseworker sent claimant notice that his application was denied.

- (4) On July 19, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (5) On July 28, 2010, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing past work per 20 CFR 416.920(e) and stating in its comments that the claimant retains the residual functional capacity to perform light work. The claimant's past work was sedentary. The claimant retains the capacity to return to past relevant work.
- (6) Claimant is a 26-year-old man whose birth date is [REDACTED]. Claimant is 5'10" tall and weighs 200 pounds. Claimant is a high school graduate and has 3 years of college where he studied computers. Claimant is able to read and write and does have basic math skills.
- (7) Claimant last worked June 10, 2009 answering phones for people who were paying utility bills. Claimant has also worked as a machine operator, an inventory and cashier clerk in a video store and a cashier at [REDACTED].
- (8) Claimant alleges the following disabling impairments: hypertension, asthma, migraine headaches everyday, a ruptured disc and nerve damage as well as allergies to beef, pork, and greenery.

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 2009. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant testified on the record that he lives with his parents in a house and that he is married but separated and has no health insurance. Claimant does not have any children under 18 who live with him and he has no income but receives \$ [REDACTED] per month in Food Assistance Program benefits. Claimant does have a driver's license but he hasn't driven in a year because he has no vehicle. His parents take him where he needs to go. Claimant testified that he does cook in the microwave and cooks things like TV dinners and hot pockets. Claimant testified that he does grocery shop one month and usually his father goes to help with heavy lifting. Claimant testified that he does put his laundry into the wash but that's the only chore that he has. Claimant testified that he has a hobby he writes, plays video games for 2 hours per day and watches television 10-12 hours per day while he is lying down. Claimant testified that he can stand for 15 minutes, sit for 15 minutes, walk for 10-15 minutes and squat but not bend at the waist. Claimant testified that he can only take a bath because he can't stand in the shower and he can normally dress himself but on

bad days which happens about 6 times per week he needs help with his pants and socks. Claimant testified that he could not tie his shoes or touch his toes and that his level of pain on a scale from 1 to 10 without medication is a 9 and with medication is a 7. Claimant testified that he has an amputated fingertip on the right hand and that he is right-handed and that his legs and feet have pain but that they are fine otherwise. Claimant testified that the heaviest weight he can carry is 5 pounds and that he does smoke one cigarette per month and his doctor has not told him to quit. Claimant testified that in a typical day he wakes up and moves around to try to keep his muscles from atrophying and then lies on the couch and watches television mostly all day. He goes out to a mason meeting one time per week.

A March 22, 2010 medical examination indicates that the claimant was cooperative in answering questions and following commands. He was dressed in a t-shirt, jeans and tennis shoes. His immediate, recent and remote memory was intact with normal concentration. His insight and judgment were both appropriate. The claimant provided a good effort during the examination. His blood pressure in his left arm was 130/80. Pulse equals 78 and regular. Respiratory rate equals 16. Weight equals 196.5 pounds and height was 70" without shoes. The skin was normal. In the eyes and ears visual acuity in the right eye was 20/15 and in the left eye was 20/15 with corrective lenses. Pupils were equal, round and reactive to light. The claimant could hear conversational speech without limitation or aids. The neck was supple without masses. In the chest breath sounds were clear to auscultation and symmetrical. There was no accessory muscle use. In the heart, there was regular rate and 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 system there was no clubbing, cyanosis, or edema detected. The femoral, popliteal, dorsal pedis and posterior tibial pulses were intact. Hair growth was present on the lower extremities. The feet were warm with normal color. There were no femoral bruits. In the musculoskeletal area there was no evidence of joint laxity, crepitance or effusion. Grip strength remains 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, mild difficulty squatting and was unable to hop due to pain. Straight leg raising was negative. There was a paravertebral muscle spasm noted. Range of motions studies indicated that in the cervical spine claimant had normal range of motion. In the dorsal lumbar spine his flexion was 70 degrees and normal was 0 to 90 degrees, extension normal was 0 to 15 degrees and his range was 15 degrees, right lateral flexion was 0 to 25 degrees normal and claimant's range was 15 degrees and left lateral flexion normal was 0 to 25 degrees and his range was 15 degrees. Claimant was normal in all other areas in the musculoskeletal area. In the neurological areas cranial nerves were intact. Motor strength and tone were normal. Sensory was intact to light touch and pinprick. Reflexes were 2+ and symmetrical. Romberg testing was negative. The claimant walked with a guarded gait without the use of an assist device. The doctor concluded that claimant's symptoms now appear to be more ligamentous than myofascial in origin. He did have some paravertebral spasm on examination. He did have difficulty doing orthopedic maneuvers due to pain. He does compensate with a shuffling gait and does use a brace and a cane, but the doctor did not think that it was required. At this

point claimant should avoid repetitious twisting, bending or lifting of over 20 pounds. The doctor indicated that the claimant would possibly benefit from injection treatments. Claimant complained of radiating pain but the doctor did not find any radicular symptoms. (Pages 1-6)

A radiology report dated March 22, 2010 of the lumbar spine indicates vertebral height and alignment are satisfactory. There is minimal spondylosis at L5-S1. Remaining disc spaces are well maintained. There were no abnormalities affecting posterior elements or S1 joints. (Page 8)

On November 19, 2007, claimant was admitted to the hospital for a herniated lumbar disc at L5-S1 status post micro discectomy L5-S1 on the right.

This Administrative Law Judge did consider all 132 pages of claimant's medical documents which are contained in the file in making this decision.

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 no disabling mental impairments.

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. 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. Under the Medical-Vocational guidelines, a younger individual (age 26), with a more than high school education and an unskilled work history who is limited to light work is not considered disabled pursuant to Medical Vocational Rule 202.20.

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.

