

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: 2010-7372
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 12, 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 January 12, 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 November 17, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On March 22, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On March 27, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On April 28, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On November 30, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The claimant's condition is not of a severe nature. While the claimant does have some limitations secondary to a history of cervical fracture, these limitations will still allow the claimant to perform light exertional tasks. As the claimant retains the ability to perform light exertional tasks, the claimant retains the ability to perform duties associated with their past relevant work as a cashier and service representative. MA-P, retroactive MA-P, and State Disability are denied by this decision. Listings 1.02, 1.03, and 1.04 were considered in this determination. (agency exhibits 49)

(6) Claimant is a 48-year-old man whose birth date is [REDACTED]. Claimant is 6'1" tall and weighs 180 pounds. Claimant has an Associates Degree in Business Administration. Claimant is able to read and write and does have basic math skills.

(7) Claimant last worked September 2007 doing construction and home improvement. Claimant has also worked at the [REDACTED] as stock/cashier/laborer and finance operations for [REDACTED] and as a loan officer for [REDACTED].

(8) Claimant alleges as disabling impairments: cervical fractures, right knee fracture, thyroid problems, hypertension, asthma, and neck pain.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or

department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the 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 2007. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that in October 2008, claimant climbed a ladder and fell off breaking his cervical 2 and shattering cervical vertebrae 1. The objective medical evidence in the record indicates that a medical examination report states that the clinical impression is that claimant had a temporary disability and would be off work for an indefinite amount of time. Claimant required a back brace and neck brace for ambulation and he could occasionally lift or carry less than 10 pounds but could never carry 10 pounds or more. He could do reaching, pushing and pulling and fine manipulating with his hands arms but not simple grasping and could not operate foot or leg controls. Claimant had some problems with comprehension, memory and sustained concentration in social interaction. (p 6) Claimant was 6'

tall, 193 pounds and his blood pressure 116/83 and he was right hand dominant on the November 7, 2008 examination. (p5) An orthopedic clinic note dated January 29, 2008, indicated on a physical examination that claimant was tender palpation over the lateral joint line and over the vastus lateralis of the right leg. He was non-tender to palpation over the patellar tendon and distal quadriceps tendon. He had no pain or apprehension with movement of the patella. The patient was able to flex to approximately 90 degrees. He was able to obtain full extension negative lachman, negative anterior/posterior drawer, and negative mcmurray, however, the claimant was very apprehensive to the exam. He had a lot of muscle tightness while being examined. There was also noted muscle atrophy of the quads and of the gastroc soleus complex when compared to the left side. He is neurovascularly intact distally. Capillary refilled less than 2 seconds, 2+ dorsalis pedis pulse, all equal bilaterally. Positive TH/DSE is equal bilaterally, 5/5 strength. The impression was a right knee contusion with knee effusion which was improving.

(p 17) On October 23, 2008 the consultative examination indicates that, claimant's temperature was 36.6, blood pressure 169/92, pulse of 80, respiratory rate of 20, 74kg. He was well rounded, well nourished, and well developed male appearing his stated age. His HEENT was normocephalic and atraumatic. Cardiovascular, the heart was regular rate and rhythm.

Respiratory chest was clear to auscultation bilaterally. Abdomen was non-tender and non-distended. Extremities were warm and well perfused. A complete neurologic examination was performed. The claimant was awake and oriented x3. He was fluent, appropriate, followed all commands. Facial sensation is intact to light touch and pinprick throughout. Face is symmetric. Hearing is intact to finger rub bilaterally. Uvula elevates symmetrically. Shoulder shrug is 5/5. Tongue protrudes in the midline. Negative pronator drift bilaterally. Negative Hoffman signs bilaterally. Bilateral upper extremities are 5/5. Sensation is intact to light touch and pinprick

throughout. Bilaterally lower extremities are 5/5. Sensation is intact to light touch and pinprick throughout. Gait is normal-based, normal stance. Finger-to-nose is normal bilaterally. (p 20)

Radiographic studies show that claimant had no acute fracture or dislocation, no movement of any vertebral bodies. Overall the film appeared to be satisfactory. He had a CT of the cervical spine from his previous ER admission which demonstrates fracture of the OS odontoideum at C2. (p 21)

On October 22, 2008, a cervical spine flexion extension examination was performed and the findings were C1-C7 vertebral bodies were identified. There was no evidence of acute fracture or dislocation in flexion extension. There is normal alignment of the cervical spine and intervertebral disc space were well maintained. No prevertebral soft tissue swelling is appreciated. Remainder of the visualized osseous structures were intact. The impression was no acute fracture or dislocation. (26)

On January 1, 2009, claimant's blood pressure was 160/110, his respiration was 18, his temperature was 36.8, and pulse oximetry was 98% on room air. He was awake, alert, and oriented x3. He was answering questions appropriately, speaking in complete sentences without any difficulty. He appeared to be a well developed, well-nourished man. HEENT was normocephalic and atraumatic. Extraocular movements were intact. Pupils were round, reactive to light, mucosal membranes brains are moist. Oropharynx was clear. The cardiovascular area had regular rate and rhythm with no murmurs. Respiratory was clear auscultation bilaterally, no wheezes, rhonchi or rales. Abdomen, there was positive bowel sounds. Soft non-tender, non-distended. He was able to move all 4 extremities with no clubbing, cyanosis or edema. Claimant was awake, alert, and oriented x3. He answered questions appropriately. No focal neurological deficits. No asymmetry to his facial expressions. Sensation was intact. Strength was 5/5 in all 4 extremities. On January 22, 2009, a consultative exam revealed that the claimant was alert and oriented x3, his height was 6', weight was 211

pounds, and his blood pressure was 130/80. Visual acuity was 20/20 for the right eye and 20/20 for the left eye. Both eyes were 20/20 without glasses. HEENT: pupils are round, equal and reactive to light. Extraocular movements were full, no icteris. No conjunctivae pallor, the fundi were benign. No exudates or a papilledema noted. No JVD. No carotid bruits. No cervical lymphadenopathy. No thyromegaly. The throat was clear. There was no thrush noted. The tongue was central. The neck was supple with full range of motion. No lesions noted on the tongue. The patient has minimal tenderness on palpation and C-7 but no redness or swelling is noted. There was no muscle spasms appreciated in the neck. In the chest the lungs were clear to auscultation bilaterally. In the cardiovascular, S1-S2, were regular. No murmur or gallop was noted. PMI is not displaced. In the abdomen, it was soft and non-tender. No masses were felt. Bowel sounds were normal. There was no organomegaly. The musculoskeletal area range of motion of the C-spine was full. Range of motion of the thoracolumbar spine is full. There is midline spine tenderness. Bilateral knees, hip and ankles have full range of motion. There was no swelling or redness noted in the right knee. There was minimal tenderness in the medial side. The claimant was able to bend, squat and touch his toes. Bilateral shoulders, elbows and wrists have full range of motion. The dorsalis pedis is bilaterally 2+. No pedal edema. No clubbing or cyanosis. Capillary refill is intact and normal. Gait is normal. No cane is used by the claimant. No limp is noted. Neurological, alert and oriented x3. Speech is normal. Cranial nerves 2-12 are intact. Memory, claimant was able to tell his birth date and current president's name. Babinski was negative. Romberg test was negative. Finger to nose test was normal. DTR's are bilaterally symmetrical and 2+. The muscle power is 5/5 in all extremities. Pain and touch are anti-bilaterally symmetrical and equal. The claimant could get off the table and chair without any assistance. The impression was chronic neck pain due to possible contusion of the neck and

an old fracture at C-7. Right knee contusions rule out derangement of ligaments. History of hypothyroidism. A history of hypertension. The blood pressure was well controlled with metoprolol therapy. Mild COPD well-controlled without albuterol inhaler therapy. (pp 40-41)

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 insufficient corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. A DHS-49 in the file is inconsistent with the other clinical medical evidence contained in the file. There are no laboratory or x-ray findings listed on the DHS-49. The clinical impression is that claimant's disability was temporary. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, the DHS-49 has restricted claimant 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 testified on the record that he does not have any mental impairments. There is no evidence on the record that claimant suffers any mental limitations. There is a no mental residual functional capacity assessment in the record. 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. Claimant's past relevant work was light work and sedentary work as a stock and cashier person, financial operations officer or a loan officer. None of these jobs require strenuous physical exertion. 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.

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

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. 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 established by the necessary competent, material and substantial evidence 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 11, 2010

Date Mailed: May 12, 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

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