

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: 2010-12932

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 24, 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 February 24, 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 July 13, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On September 22, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical Vocational Rule 202.18.

(3) On September 24, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On November 5, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On December 30, 2009, the State Hearing Review Team again denied claimant's application stating:

The claimant is alleging disability secondary to cerebral vascular accident (CVA), diabetes and hypertension. The claimant, page 32, was in the hospital for suspected CVA. There was no evidence of CVA except for signs of parathesia, which resolved upon hospitalization. The claimant was positive for being medically noncompliant with diabetes and hypertension medications prior to admission. The evidence does support that the claimant would be limited to performing light exertional tasks. There is a treating source opinion that states the claimant is only capable of less than sedentary tasks. Page 3 has a more recent examination, which does show only mild left-sided limp and controlled hypertension and diabetes. There is a psychiatric evaluation that shows no severe limitations. The claimant retains the physical residual functional capacity to perform light exertional work. The claimant's past work was light exertional, of a semi-skilled nature. Therefore, the claimant retains the capacity to perform past relevant work. MA-P is denied per 20 CFR 416.920(e). Retroactive MA-P was considered in this case and is also denied. State Disability is denied per PEM 261 due to the capacity to perform past relevant work. Listings 4.04, 9.08, and 11.04 were considered in this determination.

(6) Claimant is a 47-year-old man whose birth date is [REDACTED] Claimant is 5' 11" tall and weighs 140 pounds. Claimant attended the 9th grade and has no GED. Claimant is able to read and write and stated that he does have some basic math skills and he could count money.

(7) Claimant last worked in March 2009, as a maintenance technician. Claimant has also worked making axles and doing radar and welding.

(8) Claimant alleges as disabling impairments: cerebral vascular accident (CVA), diabetes and hypertension..

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

The objective medical evidence on the record indicates that a June 20, 2009 [REDACTED] examination indicates that the claimant is well developed, well nourished, cooperative and in no acute distress. The examinee was awake, alert and oriented x3. The examinee was dressed appropriately and answered the questions fairly well. In the vital signs, he height was 5' 9" tall, weight 161 pounds, pulse 68, respiratory rate 16, blood pressure 142/92 and 142/88. Visual acuity without glasses was 20/200 on the right and 20/200 on the left and with glasses, 20/25 bilaterally. HEENT: He was normocephalic/atraumatic. Eyes, lids were normal. There was no exophthalmos, icterus, conjunctiva, erythema or exudates noted. PERRLA, extraocular movements intact. Ears no discharge in the external auditory canals. No bulging erythema, perforation of the tympanic membrane noted. In the nose, there was no septal deformity, epistaxis or rhinorrhea. The mouth: Teeth are in fair repair. The neck was subtle. No

JVD noted. No trachea deviation. No lymphadenopathy. Thyroid is not visible or palpable. ENT: External inspection of the ears and nose revealed no evidence of acute abnormality. In the respiratory, the chest is symmetrical and equal to expansion. The lung fields are clear to auscultation and percussion bilaterally. There are no rales, rhonchi, or wheezes noted. No accessory muscle usage noted. No cyanosis noted. There is no cough. In the cardiovascular, the patient had normal sinus rhythm, S1 and S2. No rubs, pallor, murmur or gallop. In the gastrointestinal: soft, benign, non-distended, non-tender with no guarding, rebound, palpable masses. Bowel sounds are present. Liver and spleen are not palpable. In the extremities, he had weakness against resistance of left upper and left lower extremity, 4/5 on the left and 5/5 on the right. No obvious spinal deformity, swelling or muscle spasm noted. Pedal pulses are 2+ bilaterally. There is no calf tenderness, clubbing, edema, varicose veins, or brawny erythema, stasis dermatitis, or chronic leg ulcers, muscle atrophy, joint deformity or enlargement noted. In the bones and joints, the examinee does have a cane but did not use it during the exam. He had a slight limp on the left side. Stance was normal. Tandem walk and heel walk are done very slowly while holding on to the table. He was able to squat to 50% of the distance and recover while holding on to table, and bend to 60% of the distance and recover while holding on to the table. Grip strength is equal bilaterally. The examinee is right-handed. Gross and fine dexterity appear bilaterally intact. Abduction of the shoulders is 0 to 150. Flexion of the knees is 0 to 150. Straight leg raising while lying is 0 to 50, while sitting 0-90. In the neurological area, in general the patient is alert, awake and oriented to person, place and time. Cranial nerve II, vision as stated in vital signs; III, IV and VI, no ptosis, nystagmus. PERRLA: pupils 2 mm bilaterally; V, no facial numbness. Symmetrical response to stimuli; VII, symmetrical facial movements noted; VIII, can hear normal conversation and whispered voice; IX and X, swallowing intact. Gag reflex intact. Uvula, midline; XI, head and shoulder movements against resistance are equal;

XII, no sign of tongue atrophy. No deviation with protrusion of tongue. Sensory function: intact to sharp and dull gross testing. Motor examination reveals fair muscle tone without spasticity or paralysis. He has weakness against resistance in the left upper and left lower extremity with a limp on the left side and slow gait. Cerebellar: finger to nose test done very well. The impression was diabetes, a stroke with some left-sided weakness, with weakness against resistance in left upper and left lower extremity as well as some mild memory problems; hypertension; blood pressure is under borderline control. The medical doctor states that based upon the exam, he does use a cane for balance and support. He has weakness against resistance in the left upper and lower extremity. He should avoid operating foot and leg controls as well as doing any prolonged standing or walking. He does have paresthesias on the right side and a limp on the left side.

(Pages 5, 6)

A psychiatric report, dated May 9, 2009, indicates the patient answered questions in a logical, goal-directed fashion for the most part with no loose, circumstantial or tangential association. (Page 14) The patient reported hearing voices at times but does not recognize who they are, just hearing mumbling. The patient states that sometimes he sees something passing him from the side. He used to think people on his job were against him. He does not believe he has magical or unusual powers. He denied receiving secret messages from the radio or TV. He acknowledges a history of suicidal thoughts and feelings, but denied any history of attempt. He states he has such feelings as recently as this week, but denied any active suicidal intent. He described himself as sad and depressed most of the time these days. He was able to spell his first and last name correctly and knew today's date correctly. He did not know the name of the office, but stated that he was here about his mental status, to see if he can comprehend. In immediate memory, he is able to repeat 5 digits forward and 3 digits backward correctly. In recent memory, he was able to recall 3 out of 3 objects immediately after they were stated to him. He cannot

recall any of the 3 objects (quarter, key or pencil) after a delay of 3 minutes. For past memory, this patient was able to name past president in reverse order as Obama, Bush, Regan. He knew his birth date and the days correctly. He named five large cities as Atlanta, New York, and that's about all. When asked about current famous people, he said Halley Berry, Bionce, and Samuel L. Jackson. For current events, "We're in a recession. That's about it." When asked to subtract 7 from 100, the patient stated "93, 89." 4 plus 7 equaled 11, 16 minus 9 equaled, "I want to use my fingers, 7," 4 times 6, "I was never good in school." 42 divided by 7, "I don't know." In abstract thinking: The grass is greener means, "I guess it's saying something good, something like if you was to move something and they tell you don't worry about it. You'll get it back, or whatever." Similarities and differences: A bush and a tree are alike because "they both have branches and leaves" and they are different because "a tree stands taller." In judgment: If he found a stamped envelope, he would "put it in the mailbox or take it to the post office." If he saw a fire in a theatre, he "would alert everybody. He would holler out." He had no plans for the future. He was diagnosed with depression, secondary to general medical condition, alcohol abuse in short-term remission, and had a GAF of 55. His prognosis was fair, as he was pleasant and cooperative and did show some cognitive strengths despite his reported stroke. In light of his history of alcohol, he would not be able to manage his own benefit funds. Claimant presented as a man who did appear to have physical problems from the stroke but did demonstrate some moderate cognitive strengths on sensorium and mental capacity portion, including some strengths in immediate and short-term memory as well as his capacity to concentrate as evidenced by some ability to do calculations. Thus, he would be able to have cognitive strength to engage successfully in relatively simple work type activities at present involving remembering and executing a two to three step procedure on a repetitive basis. He would be felt capable of engaging in such activities on a sustained basis. (Pages 15, 16)

A medical examination report, dated June 8, 2009, indicates that the clinical impression is that claimant's condition is improving and that he could occasionally carry less than 10 pounds and never carry 10 pounds or more. He could stand or walk less than 2 hours in an 8-hour workday and he could operate foot and leg controls with both feet and legs, and he could use his upper extremities for simple grasping and reaching but not for pushing and pulling and fine manipulating. (Pages 20, 21)

A medical report, dated March 23, 2009, indicates the claimant had non-insulin dependent diabetes mellitus, right cerebral infarction, hypertension. On physical examination, he was a well-developed and well-nourished, right-handed 46-year-old African American male who was in no acute distress. He was alert, cooperative and oriented in all three spheres. His fund of knowledge was good. His recent and remote memory were good. Attention and concentration were good. Carotid pulsations were equal and present bilaterally without bruits. He was in normal sinus rhythm. Peripheral pulses were good. Language skills were well-preserved. In examination of the cranial nerves, fundi are benign, visual fields are full. Extraocular movements were full. Pupils were equal and round and reactive to light and accommodation. There is a left central facial weakness and decreased sensation to pin prick on the left side of the face. The tongue protrudes midline without deviation. Pallet elevates without deviation. Shoulder shrug and hearing are good bilaterally. Visual acuity is good bilaterally. There is no nystagmus in any field of gaze. Examination of power shows drift in left upper extremity. Tone is within normal limits. Coordination is within normal limits. Sensation is decreased to pin prick on the left side of the body. Reflexes are 2+ and symmetrical throughout. Plantar responses: flexor on right and extensor on the left. Gait and station are not tested. (Pages 42, 43)

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. 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 that claimant is improving. 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.

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 a 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), 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.

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: June 7, 2010

Date Mailed: June 8, 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/cv

cc:

[REDACTED]