

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: 2010-3672
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 13, 2010
Shiawassee 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, an in-person hearing was held on January 13, 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 20, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On August 13, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to Medical Vocational Rule 202.21.

(3) On August 22, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On September 9, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On November 2, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing light work pursuant to Medical Vocational Rule 202.21.

(6) The hearing was held on January 13, 2010. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(7) Additional medical information was submitted and sent to the State Hearing Review Team on January 14, 2010.

(8) On January 15, 2010, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing work in the form of light work per 20 CFR 416.967(b) pursuant to Medical Vocational Rule 202.21.

(9) Claimant is a 49-year-old man whose birth date is [REDACTED]. Claimant is 5' 11" tall and weighs 200 pounds. Claimant attended the 11th grade and does have a GED. Claimant is able to read and write and does have basic math skills.

(10) Claimant last worked September 2008 installing water treatment services. Claimant worked for 30 years total in the water treatment area. Claimant had also done some carpentry work in his past.

(11) Claimant receives the Adult Medical Program and Food Assistance Program benefits.

(12) Claimant alleges as disabling impairments: degenerative joint disease, radiculopathy, sleep disturbance, depression, anxiety, and the need for back surgery.

(13) Claimant was represented at the hearing by [REDACTED]

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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) 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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) 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 September 2008. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a chiropractic report of [REDACTED] indicates that the clinical impression is that claimant is deteriorating. Claimant could stand or walk less than 2 hours in an 8-work day. Claimant could frequently carry 25 pounds, but never carry 50 pounds or more.

A spinal x-ray of [REDACTED] showed spinal curvature with cervical and lumbar subluxation pattern at C6 and L5. There was moderate cervical and lumbar disc degeneration and spurs. (pp. 34-35)

A medical examination report of [REDACTED] indicates that claimant weighed 178 pounds and his height was 5' 11" tall. His blood pressure was 112/52 in the left arm in a sitting position. Temperature was normal. Respirations were 28. Pulse was 88 per minute and regular with good volume. Snellen was 20/20 in the right eye and 20/20 in the left eye. This was with corrective lenses. Color was within normal limits. HEENT: normocephalic. Pupils were equal, round, reactive to light, and accommodation. Extraocular muscles were intact. Sclerae were non-icteric. Conjunctivae were clean. Funduscopy was benign. The neck was supple with no evidence of any lymphadenopathy or thyromegaly. Carotids were bilaterally palpable with no bruit. The chest showed an increase in the AP diameter. Hyperresonant to percussion. He had distant breath sounds. Lungs were relatively clear. He had very minimal use of the accessory muscles of respiration. Heart sounds 1 and 2 were heard. No gallop or murmur. No JVD. No edema. The abdomen was soft. Bowel sounds were present and normal and were non-tender to

deep palpation. The cranial nerves II-XII were intact. The neurological examination was otherwise grossly within normal limits. In the musculoskeletal system the claimant was in quite a bit of discomfort. He moved very slowly. He was unable to get off the examining table without very slow deliberate movements. You could see that he was in pain. He walked with wide-based antalgic gait. He was not using any accessory device such as a cane. When asked to go through the range of motion of the dorsal spine, the claimant said that he was unable to do it because of severe discomfort. The impression was lumbar radiculopathy secondary to degenerative lumbar disc disease, lumbar degenerative joint disease with probable osteophyte formation, cardio obstructive pulmonary disease (emphysema) moderate severe secondary to tobacco abuse, and gastroesophageal reflux disease. (pp. 26-27)

A medical examination report dated [REDACTED] indicates that claimant was normal in most areas of evaluation except he had flattening lateral T-waves on an EKG. He was slow arising and stiff and unable to walk on his toes. He had some weakness in his left leg and had neuropathy in the left leg, and a bulging disc and arthritis. The clinical impression was that he was deteriorating and that he could occasionally lift less than 10 pounds and stand or walk less than 2 hours in an 8-hour day and should use a cane or recline to relieve pain. He could use both of his upper extremities for simple grasping, reaching, pushing/pulling, and fine manipulating and he could use neither leg or foot for operating foot and leg controls. He had no mental limitations. (pp. 11-13)

An MRI of the lumbar spine dated [REDACTED] indicates that there was no evidence of fracture or subluxation or the lumbar vertebra. The vertebral heights were well maintained. The vertebral alignment was satisfactory. There was disc desiccation with disc height loss at L3-L4, L4-L5, and L5-S1 levels. The marrow signal was well maintained. The conus were

unremarkable. The T12-L1, L1-L2, and L2-L3 levels were unremarkable. At L3-L4 level, there was circumferential disc bulge with facet arthropathy with minimal encroachment of the disc into the inferior aspect of the neural foramen. The superior neural foramen was patent. There was no evidence of central canal stenosis. At L4-L5 level, there was circumferential disc bulge with facet arthropathy resulting in bilateral mild neural foraminal stenosis. There was no central canal stenosis. At L5-S1 level, there was circumferential disc bulge with associated facet arthropathy resulting in bilateral moderate neural foraminal stenosis without central canal narrowing. The disc comes in contact with the exiting left L5 nerve root. (p. 10) The impression was circumferential disc bulge with facet arthropathy resulting in bilateral neural foraminal stenosis at L3-L4 and L4-L5 levels without significant central canal stenosis and circumferential disc bulge with facet arthropathy with bilateral moderate neural foraminal narrowing at L5-S1 level where the disc contacts the exiting left L5 nerve root. (p. 9)

A consultation examination of [REDACTED] indicates that claimant's mental status was he was alert, a pleasant demeanor was noted. He was oriented to 3 spheres. Affect and mood were appropriate. Fund of knowledge seemed appropriate. His ocular movements III, IV, and VI there were no ptosis identified and primary gaze appeared normal. Extraocular movements were full. Saccadic and pursuit eye movements were normal. In the facial nerve VII the muscles of the facial expression were symmetric with no overt paresis identified and there was no abnormal flattening of the nasolabial fold. There was normal sensation to pinprick, light touch, and temperature. Joint position and vibratory sense were symmetric and normal. The reflex responses were 2/4 at the biceps, 2/4 at the triceps and 2/4 at the brachioradialis. Tromner-Hoffman reflex

was non-pathologic. The knee jerks were 2/4 with 2/4 present at the Achilles. Babinski was down bilaterally. In the musculoskeletal area, claimant exhibited good strength throughout except extensor hallucis bilaterally seemed to be somewhat weak. Straight leg raising was mildly positive bilaterally. In the cerebellar, he ambulated with the assist of a single-point cane because of the pain. The assessment was lumbar disc herniation and lumbosacral radiculopathy. (p. 8)

A consultative examination dated [REDACTED] indicates that on examination claimant had normal pulses in the legs and feet and no edema or cyanosis. Motor examination was difficult to evaluation due to pain but he did not seem to have any specific weakness. No trophy, clonus, fasciculations were noted. Deep tendon reflexes showed brisk knee jerks at 2-3+, less brisk ankle jerks at about 1-2+, probably decreased on the left. Plantar responses were flexor. Sensory examination was felt to be within normal limits for pinprick, light touch, pressure, joint position, vibration sense, as well as perianal sensation. Straight leg raising, lying down was possible to only about 20-30 degrees on the left and about 45 degrees on the right, both with predominant back pain and no clear leg pains, with continued or worsening back pain with movements of the hip joint. Hip range of motion was decreased bilaterally. Sitting up, straight leg raising was possible to almost 90 degrees, again with back pain but no definite leg pain. He had considerable paravertebral muscle spasm in the lumbar region and was tender across the entire low back as well as over the sacroiliac joints and possibly over the leg sciatic notch. All movements of the low back were markedly restricted with complaints of pain in the low back. With a little help he was able to walk on heel and on toe although gait was not entirely diagnostic because of the pain. He has had an MRI scan of the lumbar spine done in April 2009 showing evidence of a herniated disc at L5-S1 on the left together with degeneration of this disc.

This was most notable on the axial T1 scans. Although he had considerable back pain as opposed to leg pain, I feel that he would benefit from an operation of the L5-S1 level on the left side. (pp. 1-2 of the new information) Claimant representative suggests that claimant meets listing under Appendix 1, Subpart P-1.00, musculoskeletal.

At Step 2, claimant has the burden of proof of establishing that he has a severely restrictive physical or mental impairment. There is insufficient evidence in the record indicating that claimant suffers mental limitations resulting from his reportedly depressed state.

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 no mental residual functional capacity assessment in the record. 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. For these reasons, the 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 as he has not established that he has a severely restrictive physical or mental impairment which has lasted for the durational requirement of 12 months or more or have kept him from working at any job for a period of 12 months or more.

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. Specifically, claimant does not meet Appendix

1, Subpart P-1.00, musculoskeletal system, as he does not have a loss of major function.

Claimant does not have the inability to perform fine and gross movements effectively on a sustained basis. Claimant does not have the inability to ambulate effectively. He does use a cane sometimes only. Even if this Administrative Law Judge finds that claimant is unable to ambulate effectively on a sustained basis due to pain associated with the underlying musculoskeletal impairment, this Administrative Law Judge finds that claimant has not established that he cannot perform light or sedentary work even with his impairments and therefore he does not meet a listing.

This Administrative Law Judge will not deny claimant at Step 4 based upon his ability to perform his past relevant work. Claimant's past relevant work required him to do heavy lifting and bending and stooping which he could probably not do with his back condition. Therefore, this Administrative Law Judge will not deny claimant 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 sedentary tasks if demanded of him. Claimant does retain bilateral manual hand dexterity.

Claimant testified on the record that he does have a driver's license and he drives 1-2 per month to his doctor's office and he usually drives between 9-10 miles. Claimant is married and does not have any children under 18 who live with him. Claimant testified that he can walk 50-100 yards with a cane, can stand for 15 minutes at a time, and sit for an hour at a time. Claimant cannot squat or bend at the waist but he is able to shower and dress himself, and tie his shoes but not touch his toes. Claimant testified that his level of pain on a scale from 1 to 10

without medication is a 10 and with medication is a 6/7. Claimant testified that he is right-handed and that his hands and arms are fine. Claimant testified that he does have pain down his left leg and that he cannot lift anything. However, the objective medical evidence in the record indicates that claimant can lift under 10 pounds. The 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. Claimant's testimony as to his limitations indicates that he should be able to perform at least 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. Claimant did testify that he does receive some relief from his pain medication. 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 49), with a high school education (GED) and an unskilled work history who is limited to sedentary work would not be considered disabled pursuant to Medical Vocational Rule 201.21, 201.22 as well as 201.20.

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. PEM, 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 at least sedentary work even with his impairments. Claimant does retain bilateral hand dexterity. 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: March 17, 2010

Date Mailed: March 17, 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.

2010-3672/LYL

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/vmc

cc:

