

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2010-46119
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 9, 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 September 9, 2010. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED]. This case was consolidated with 2010-44932 during the hearing but separate decisions will be issued.

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 March 26, 2010, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On May 10, 2010, the Medical Review Team denied claimant could perform other work.
- (3) On July 1, 2010, the department caseworker sent claimant notice that his application was denied.
- (4) On July 6, 2010, claimant filed a request for a hearing to contest the department's negative action.

- (5) On August 13, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The Social Security ALJ approved the claimant for a closed period of disability between October 1, 2001 through May 30, 2004. Subsequent to May 30, 2004, the claimant regained the capacity to perform at least a full range of light work capacity according to the judge's ruling dated November 29, 2005. The claimant reports severe back pain with decreased range of motion. He had tenderness and muscle spasms and hyperreflexia. However, there was no muscle weakness or sensory deficits. There was no muscle atrophy or wasting. He is able to walk without assistance. The claimant's impairments do not meet/equal the intent or severity of a Social Security Listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of light work. In lieu of detailed work history, the claimant will be returned to other work. Therefore, based on the claimant's vocational profile of closely approaching advanced age at 50, high school equivalent education and a history of semi-skilled work, MA-P is denied using Vocational Rule 202.14 as a guide. Retroactive MA-P was considered in this case and is also denied. State Disability Assistance is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity for the above stated level for 90 days.
- (6) Claimant is a 50-year-old man whose birth date is [REDACTED]. Claimant is 5'11" tall and weighs 215 pounds. Claimant attended the 11th grade and does have a GED. Claimant is able to read and write and does have basic math skills.
- (7) Claimant last worked in September 2008 where he owned his own business installing and servicing water softeners. Claimant worked in a water treatment for 34 years and has also worked as a carpenter.
- (8) Claimant alleges as disabling impairments: Back pain, which has worsened since September 2008; an injury to his back. Steel in the right shoulder which aches in the winter but is okay, and the feeling that something is moving in his back. Claimant also alleges stress and anxiety.

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 2008. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant testified that he lives with his wife and his wife supports him. Claimant has no children under 18 who live with him and he does not have any income. Claimant receives Food Assistance Program Benefits and does have a driver's license and drives one time per week, usually between 7 and 8 miles. Claimant does not cook, grocery shop or clean his home; his wife does all that. He does no outside work. Claimant watches television 16

hours per day. Claimant testified that he can stand 10 to 15 minutes, sit for one hour and walk one hundred yards. Claimant testified that he cannot squat or bend at the waist or tie his shoes or touch his toes. Claimant testified his knees are fine and he is able to shower and dress himself. Claimant testified that his level of pain on a scale from 1 to 10 without medication is a 10 and with medication is a 7 to 8 and that his medications don't work well. Claimant testified that he is right handed and his hands and arms are fine and his legs and feet are fine, except he does have some numbness in his left leg from the back problem and it hurts. Claimant testified that the heaviest weight he can carry is nothing and that he doesn't smoke, drink and stopped doing marijuana and cocaine 12 to 14 years before the hearing. Claimant testified on a typical day he stays in bed with his leg elevated to relieve the pressure on his back and that he is not able to engage in sexual relations.

A Medical Examination Report dated April 26, 2010, indicates that claimant stands 5'11" tall and weighed 214 pounds. His blood pressure was 120/80 and he is right hand dominant. Visual acuity on the right was 20/30 and on the left 20/40. Claimant was normal in the general area of examination except that he had bilateral hyperreflexia. The clinical impression is that claimant is stable and that he can occasionally lift 10 pounds or less but never 10 pounds or more and that he can stand or walk less than 2 hours in an eight hour day. He did not require assistive devices for ambulation and he could do reaching and pushing and pulling with both upper extremities but not simple grasping. There is no indication that he cannot do fine manipulating with the upper extremity and claimant can operate foot and leg controls with his left foot or leg. Claimant had no mental limitations. General Practitioner indicated that claimant is disabled and needs surgical treatment. (pages 44-46).

At Step 2, claimant has the burden of proof of establishing that she 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.

A medical examination dated October 23, 2009 indicates that claimant had paravertebral muscle spasm in the lumbar region and it was tender across the entire lower back as well as over the sacroiliac joints and possibly over the left 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 tip-toe, although the gait was not entirely diagnostic because of the pain. He had a MR scan of the lumbar spine done April 2009 showing evidence of a herniated disc at L5- S1 on the left together with degeneration of this disc (page 59).

On May 11, 2009, Medical Examination Report indicates that claimant was dressed casually. His general demeanor appeared to be spontaneous. He maintained good eye contact. He was alert. He had a pleasant demeanor. He is oriented to 3 spheres. Affect and mood were appropriate. Fund of knowledge was appropriate. In cranial nerve CN to optic nerve, pupils are round and equal. The light reflects as normal bilaterally. Consensual constriction is observed. Near point reflex is normal. The ocular movement 3, 4, and 6 ptosis is not observed. Extraocular movements are full. Spontaneous nystagmus is absent. Gaze and saccades are normal. Full pursuit is normal and the vertical and horizontal plane. Facial nerve 7; the muscles of the facial expression are symmetric, no overt paresis is identified and there is no abnormal flattening of the nasal labial fold. Straightening of the lumbar spine and loss of lordotic curvature is noted. The paraspinal muscles are hypertonic. He can forward flex only about 15 degrees before it becomes intolerable. Left straight leg raising is positive in the sitting position. Reverse straight leg test is positive. The reflex responses were 2/4 at the biceps, 2/4 with the triceps and 2/4 at the brachioradialis. Romberg-Hoffman reflex was non-pathologic. The knee jerks were 2/4 with 2/4 present at the Achilles. Babinski is down bilaterally. In the musculoskeletal area there is normal strength noted throughout except in the lower left extremity distally. There appears to be some mild weakness of the dorsiflexors and extensor hallucis. Upper extremities cerebellar testing is normal. His gait is antalgic. He uses a single point cane. MRI of the lumbar spine performed April 1, 2009 reveals circumferential disc bulge with facet arthropathy resulting in bilateral mild foraminal stenosis at L3-4 and L4-5. There is moderate bilateral neural foraminal narrowing with disc bulging contacting at the exiting L5 nerve root of the assessment of the lumbar disc herniation and lumbosacral radiculopathy. (Page 62)

On July 30, 2009 Medical Examination Report indicates that claimant is 71" tall and weighs 186 pounds and his blood pressure was 96/62 and he is right hand dominant. His visual acuity is 20/25 in the right eye and 20/25 in the left eye. The clinical impression is that claimant is deteriorating and that he could carry less than 10 pounds occasionally but never 10 pounds or more and that he could stand/walk less than 2 hours in an eight-hour workday and he needed a cane and reclines to relieve pain. He can use both of his upper extremities for simple grasping, reaching, pushing and pulling and fine manipulating but cannot operate foot and leg controls. (Page 12)

Claimant alleges the following disabling mental impairments: Stress and anxiety. 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.

This Administrative Law Judge finds that the objective medical evidence of 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 sedentary work even with his impairments. Under the Medical/Vocational Guidelines, a person who is closely approaching advanced age (age 50) with a high school education and unskilled work history, who is limited to sedentary work, is not considered disabled pursuant to Medical/Vocational Rule 201.13.

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.

The Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) is material to a person's disability and when benefits will or will not be approved. The regulations require the disability analysis be completed prior to a determination of whether a person's drug and alcohol use is material. It is only when a person meets the disability criterion, as set forth in the regulations, that the issue of materiality becomes relevant. In such cases, the

regulations require a sixth step to determine the materiality of DAA to a person's disability.

When the record contains evidence of DAA, a determination must be made whether or not the person would continue to be disabled if the individual stopped using drugs or alcohol. The trier of fact must determine what, if any, of the physical or mental limitations would remain if the person were to stop the use of the drugs or alcohol and whether any of these remaining limitations would be disabling.

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that claimant was not eligible to receive Medical Assistance and/or State Disability Assistance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of light or sedentary work even with his impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.

Landis

/s/

Y. Lain

Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: October 11, 2010

Date Mailed: October 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/sd

cc:

