

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: 2010-9084

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 16, 2010

Oakland 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 16, 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 May 18, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On September 24, 2009, the Medical Review Team denied claimant's application stating that claimant could perform prior work.

(3) On October 9, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On October 19, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On December 22, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation:

The claimant reports being HIV positive. However, there is no evidence of active infection on examination. He is depressed and anxious but there is no evidence of a thought disorder. 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 simple, unskilled 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 a younger individual, high school education and a history of unskilled work, MA-P is denied using Vocational Rule 202.20 as a guideline. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above-stated level for 90 days.

(6) Claimant is a 46-year-old man whose birth date is [REDACTED]. Claimant is 5' 8" tall and weighs 130 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills.

(7) Claimant last worked in February 2009 at [REDACTED] as a food avenue person making popcorn and hot dogs. Claimant has also worked as a dish washer, a cook, bus boy, and as a line cook.

(8) Claimant alleges as disabling impairments: HIV positive, depression, anxiety, and substance abuse.

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

The objective medical evidence on the record indicates that a mental status examination of July 8, 2009 indicates: The patient was a 45-year-old Caucasian, divorced male who is medium in height and slender built, who was punctual for his appointment and brought by [REDACTED] his friend. He said he was 5' 8" tall and weighed 129 pounds. This is his usual weight. He was clean and neatly groomed and his hair was neatly cut short. He wore eyeglasses. He was anxious. He spoke in a Southern accent and he was competent. He was polite and cooperative. He was in contact with reality. He spoke in a normal tone of voice with moderate and with spontaneity and productivity. His conversations were coherent and relevant. He said he felt sad and depressed about his life. He was worried about his legal problems because he has not been

able to back pay the restitution. He was worried about what would happen to him and worried that he might go to jail. His affect was anxious and depressed. He denied any suicidal and homicidal intentions. He denied any history of delusions. He said today was Wednesday, July 8, 2009, which was the correct answer. He was oriented to time, person and place. He was able to repeat six numbers forward and three numbers backward, in immediate memory. In recent memory, he was able to remember two out of three objects given two or three minutes earlier. For the names of the past presidents, he said "The current president is Obama. Before him was Bush. Before him was another Bush. Before him was Reagan, and before him was Carter." He said his date of birth was September 18, 1963, which was the correct answer. When asked to do serial 7's from 100, he said slowly 93, 86, 79, 72, 65, 58, 41, 36, 29, 22, 15, 8, and 1. For five large cities, he said "Atlanta, New York, Chicago, Fort Wayne, and Indianapolis." For the meaning of the proverb, the grass is greener on the other side, he said, "the other side looks better until you get there." For the meaning of the proverb, don't cry over spilled milk, he said, "don't cry over the little things." When he was asked how a bush or a tree were alike, he said, "they are both plants." When he was asked how they are different, he said, "the bush is smaller." When asked what he would do if he found a stamped, addressed envelope, he said, "I would put it in the mailbox." When asked what he would do if he discovered a fire in a theatre, he said he would call 911. He had an AXIS GAF of 50 to 55, and his prognosis was poor, and he would not be able to handle benefit funds due to his cannabis dependence history. He was diagnosed with dysthymic disorder and cannabis dependence, anti-social personality disorder, HIV infection, leg pains, and hypoglycemia.

A mental residual functional capacity assessment in the record indicates that claimant was moderately limited in some areas, but not significantly limited in most areas, and that as of

August 1, 2009, he has moderate impairment in functioning in the following areas: the ability to understand or remember detailed instructions, the ability to carry out detailed instructions, the ability to maintain attention and concentration for extended periods of time, the ability to work in coordination with or proximity to others without being distracted by them, in the ability to respond approximately to changes in the work setting. Claimant is capable of performing unskilled work.

A physical residual functional capacity assessment conducted on July 22, 2009 indicates that claimant can occasionally lift or carry 50 pounds, he can frequently lift or carry 25 pounds; he could stand or walk for about 6 hours in an 8-hour work day and sit for about 6 hours in an 8-hour work day; can push or pull, including the operation of hand or foot controls, on an unlimited basis. The medical reports from July 2009 indicate a history of HIV positive since 1997. He complains of fatigue and headaches, but no blurred vision, no chest pain or shortness of breath, no vomiting; walks with a normal gait, no difficulty getting on and off the examination table, normal breathing sounds, no muscular tenderness or wasting, no neurological deficits. The diagnosis is HIV positive with no sign of active infection, history of hypoglycemia, active limited due to fatigue. Claimant could frequently climb stairs, balance, stoop, kneel, crouch and crawl and could occasionally use ladders, ropes or scaffolds. Claimant had no established manipulative limitations and no visual limitations. Claimant had no communication limitations and no environmental limitations, except that he should avoid concentrated exposure to hazards from machinery or heights. Claimant's activities of daily living indicated that he had problems sleeping, but no trouble with self-care. He prepares meals daily, does laundry, cleans and goes out alone and drives a car. He shops in stores, and he'll walk ½ a mile and then has to rest for 15 minutes. His physical examination was unremarkable. The claimant's physical condition does

not limit his ability to work. The claimant's statements are partially credible. It is stated the claimant could reasonably have fatigue from his condition including the depression. There is no active infection from his HIV, and the hypoglycemia does not appear to be limiting his physical functioning.

A medical examination report, dated May 12, 2009, indicates that claimant's clinical impression is that he is stable. He can occasionally lift 20 pounds or less, but can never lift 20 pounds or more. He could use both upper extremities for simple grasping, reaching, pushing and pulling and fine manipulating, and could operate foot and leg controls with both feet and legs. He had some limitations in comprehension, memory and sustained concentration, but he was normal in all areas of examination except that he had atrophy of musculature of the bottom left leg and impaired memory.

At Step 2, the objective medical evidence on the record indicates that claimant has not established that he has severe impairment or a combination of impairments which have lasted or will last the durational requirement of 12 months or more. From the evidence indicated in the record, claimant was a substance abuser abusing cannabis. Claimant does not have any mental or physical limitations. Claimant is, therefore, disqualified from receiving disability at Step 2, because he has not established that his severe impairment or combination of impairments have lasted the durational requirement of 12 months or more, or have kept him from working for 12 months or more; however, this Administrative Law Judge will proceed through the sequential evaluation process for the sake of argument since Step 2 is a *de minimus* standard.

At Step 3, claimant's impairments do not rise to the level necessary to be specifically listed as disabling as a matter of law.

At Step 4, claimant testified on the record that he is able to walk two to three blocks, sit for one to two hours, stand for ½ an hour, shower and dress himself, touch his toes, and tie his shoes. He doesn't really have any physical impairments except that his left leg was broken three times, so he does have some problems with his lower left leg. Claimant testified that he has been HIV positive since 1997 and he is depressed by life in general and he doesn't like people yelling at him. Claimant testified that he does have a driver's license and drives to the grocery store and to his daughter's house, and that he cooks every other day and cooks things like ground round, chicken and fish, and that he grocery shops every two weeks with no help. Claimant is able to clean his home by dusting and vacuuming.

The Administrative Law Judge finds that claimant has not established that he can no longer perform any of his prior work. Claimant should be able to perform his prior work as a bus boy, as a cook, as a dish washer, or as a person working at the food avenue. Claimant did testify that he was fired from Target for stealing from the store and not because he could not perform the essential tasks of the job. Therefore, claimant is also disqualified from receiving disability 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 testified on the record that he does have 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 contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. In addition, based upon claimant's medical reports, it is documented that he had drug use as well as use of alcohol, which would have contributed to his physical and alleged mental problems.

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 46), 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 benefit program:

To receive State Disability Assistance benefits a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, page 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 this 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

Adm
Departm

Date Signed: May 24, 2010

Date Mailed: May 25, 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:

