

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: 2010-9393

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 17, 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 17, 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 August 28, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On October 19, 2009, the Medical Review Team denied claimant's application stating that claimant could perform his prior work.

(3) On September 10, 2009, the department caseworker sent claimant notice that his application was denied.

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

(5) On December 23, 2009, the State Hearing Review Team again denied claimant's application stating that claimant's impairments lacked duration per 20 CFR 416.909.

(6) The hearing was held on February 17, 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 February 19, 2010.

(8) On February 25, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation:

This case was returned by the Office of Administrative Hearings with new evidence presented by the claimant. This evidence amounted to a medical source statement and two compact discs with images whose reports are already contained within the evidence. The evidence does not medically change the decision of the State Hearings Review Team made on December 23, 2009. The medical evidence of record indicates that the claimant's condition is improving or is expected to improve within 12 months from the date of onset or from the date of surgery. Therefore, MA-P is denied due to lack of duration under 20 CFR 416.909. Retroactive MA-P was considered in this case and is also denied. State Disability is denied per PEM 261 as the impairments would not preclude all work for 90 days. Listing 1.07 was considered in this determination.

(9) Claimant is a 47-year-old man whose birth date is [REDACTED]. Claimant is 6' tall and weighs 200 pounds. Claimant has a GED and is able to read and write and does have basic math skills.

(10) Claimant last worked three to four years before the hearing at [REDACTED] driving a hi-lo. Claimant has also worked in security and has worked as a plumber.

(11) Claimant alleges as disabling impairments: four bad discs in his spine, and a fractured left wrist.

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 approximately 2006. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant was in a motor vehicle accident and had a CT of the chest with contrast, dated August 13, 2009, which indicated the lungs were clear. There was minimal dependent atelectasis. There is no plural or pericardial effusion. The heart and great vessels were unremarkable. There is no mediastinal or

hilar lymphadenopathy evident. There was no displaced rib fracture evident. The thoracic vertebral bodies are unremarkable in appearance. There are no lytic-or blastic-type lesions. There is a well defined 7 mm area of low attenuation in the right thyroid low likely representing a thyroid nodule. There is a small calcification within the left thyroid low that may represent a calcified nodule. In the abdomen and pelvis, the liver appeared slightly low in attenuation. There is a mild dextro-contour abnormality to the anterior hepatic margin, suggestive of early cirrhotic change. There is no discrete intrahepatic mass evident. The gallbladder is slightly distended and contains multiple round of calculi laying in a dependent fashion. There is no biliary ductal dilation evident. The spleen, pancreas and bilateral adrenal glands appear unremarkable. There is no hydronephrosis or solid intrarenal mass evident. The cortical enhancement and contrast is symmetric. The small and large bowel appears normal in course and caliber. There is no evidence of bowel obstruction or perforation. There is no ascites or free fluid within the pelvis. There is no mesenteric, retroperitoneal or pelvic lymphadenopathy evident. There is minimal diverticulosis of the descending and sigmoid colon without evidence of diverticulitis. The urinary bladder appears intact. The remaining pelvic structures appear unremarkable. There are early calcified atherosclerotic changes of the aorta and its major branches. There is no evidence of aneurysm. There are minimal degenerative changes in the lower lumbar spine. There is no fracture or dislocation evident. The impression is no CT evidence of solid organ injury, hemorrhage, hollow discus rupture or fracture (pages 10-12).

An MRI of the C-spine indicates the cervical vertebral body height and alignment are grossly maintained. There is no evidence of acute fracture or subluxation. The odontoid process on the lateral masses of C1 and C2 remain intact. The atlantodental intervertebral and adjacent soft tissues appear unremarkable. Note is again made of fluid signal in the posterior fossa, likely

representing an arachnoid cyst. There are diffuse degenerative changes in the mid and lower cervical spine. The impression is an unremarkable CT of the head, moderate to advanced degenerative disc disease of the lower cervical spine with areas of moderate central canal stenosis as detailed above, and minimal degenerative changes of the lumbar spine with no evidence of fracture or other acute process. The cervical vertebral body height and alignment is grossly maintained. There is no evidence of acute fracture or subluxation. The odontoid process in the lateral masses of C1 and C2 are intact. There is diffuse degenerative disc disease of the lower cervical spine. There is disc space narrowing at C4-C5, C5-C6, and C6-C7. There is associated anterior and posterior hypertrophic spurring with multiple disc spur complexes protruding into the spinal canal. There is moderate canal stenosis at C4-C5, C5-C6, and C6-C7. There is mild associated facet arthropathy (pages 14-17).

A Medical Examination Report, dated August 27, 2009, indicates that the clinical impression is that claimant is improving and that limitations are not expected to last more than 90 days. Claimant could do simply grasping, reaching, pushing and pulling, and fine manipulating with the right upper extremity and simple grasping and reaching with the upper left extremity (pages 5-6).

A Medical Needs form, dated August 27, 2009, indicates that claimant had a distal radius left wrist fracture and would need three months for medical treatment but he was ambulatory, did not need special transportation, did not need someone to accompany him to medical appointments, and he did not need medical assistance with personal care activities (page 7).

A Medical Examination Report, dated February 12, 2010, indicates that claimant has no lifting of greater than 10 pounds, and should not do bending or twisting below the waistline. Claimant could work part time (New Information, page 2).

At Step 2, claimant has the burden of proof of establishing that he has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. There is insufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant has reports of pain in multiple areas of his body; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. The clinical impression 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. Although claimant does have some back problems and neck problems, his doctor has indicated that he can work part time. 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.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers severe mental limitations. Claimant testified on the record that he does not have any mental impairments. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. For these reasons, this Administrative Law Judge finds that claimant has failed to meet his burden of proof at Step 2. Claimant must be denied benefits at this step based upon his failure to meet the evidentiary burden.

If claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of claimant's condition does not give rise to a finding that he would meet a statutory listing in the code of federal regulations.

If claimant had not already been denied at Step 2, this Administrative Law Judge would have to deny him again at Step 4 based upon his ability to perform his past relevant work. Claimant's past relevant work was as a security guard. As working as a security guard does not require strenuous physical exertion, there is no medical evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work which he has engaged in, in the past. Therefore, if claimant had not already been denied at Step 2, he would be denied again at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing

is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls....

20 CFR 416.967(b).

Claimant has submitted insufficient objective medical evidence that he lacks the residual functional capacity to perform some other less strenuous tasks than in his prior employment or that he is physically unable to do light or sedentary tasks if demanded of him. Claimant's activities of daily living do not appear to be very limited and he should be able to perform light or sedentary work even with his impairments. Claimant has failed to provide the necessary objective medical evidence to establish that he has a severe impairment or combination of impairments which prevent him from performing any level of work for a period of 12 months. The claimant's testimony as to his limitations indicates that he should be able to perform light or sedentary work.

Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to claimant's ability to perform work. Claimant did testify that he does receive some relief from his pain medication. Claimant does continue to smoke a half pack of cigarettes per day. His doctor has told him to quit and he is not in a smoking cessation program. Claimant is not in compliance with his treatment program.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial gainful activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

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 47), 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.

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.

Adm _____
Departm _____

/s/

Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: July 16, 2010

Date Mailed: July 19, 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:

