

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: 2008-27983
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 29, 2009
Clinton County DHS

ADMINISTRATIVE LAW JUDGE: Ivona Rairigh

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 April 29, 2009. Claimant personally appeared and testified. Also appearing and testifying on claimant's behalf was his father [REDACTED]

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 13, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On May 13, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On May 16, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On July 10, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On August 26, 2008, the State Hearing Review Team (SHRT) also denied claimant's application stating impairment lacks duration per 20 CFR 416.909, as claimant's condition is improving or is expected to improve within 12 months from the date of onset.

(6) Claimant presented additional medical evidence following the hearing which was forwarded to SHRT for additional review. On [REDACTED], SHRT determined the evidence was insufficient noting that the agency is to request copies of the internist examination scheduled by Social Security disability for June 10, 2009 and copies of the psychological evaluation scheduled for June 25, 2009.

(7) Additional information was received and forwarded to SHRT. On [REDACTED], SHRT once again determined that the claimant was not disabled as the medical evidence of record indicates he retains the capacity to perform simple, unskilled, light work avoiding work requiring bilateral fine dexterity. SHRT used Vocation Rule 202.20 as a guide.

(8) Claimant is a 32 year-old male whose birthdate is [REDACTED]. Claimant is 6'2" tall and weighs 290 lbs. Claimant completed 12th grade but has been in special education classes pre-school through graduation. Claimant has some ability to read and write at about the 8th grade level and can do basic math.

(9) Claimant last worked in March, 2008 at a restaurant for 4 months, job that ended when he was injured by burning his hands. Claimant has also worked in maintenance for a

restaurant for 1 year in 2007, job he quit due to problems with co-workers and his boss.

Claimant has had other jobs in the past at various restaurants bussing tables, as a short order cook, and training people how to cook. Longest job that claimant held was cooking at a restaurant for 3-4 years.

(10) Claimant alleges as disabling impairments electrical burns to his right forearm and hand for which he received a skin graft and learning difficulties.

CONCLUSIONS OF LAW

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).

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).

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 does 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 testified that he has not worked since March, 2008. Claimant is not disqualified from receiving disability at Step 1.

At Step 2, claimant has the burden of proof of establishing that he has a severely restrictive physical or mental impairment or a combination of impairments that is "severe". An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities.

An impairment or combination of impairments is “not severe” when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual’s ability to work (20 CFR 404.1521 and 416.921; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p).

The objective medical evidence on the record includes March, 2008 records of claimant’s hospital treatment for electrical burns to his hands that occurred when it appears claimant may have touched some exposed electrical wiring in his apartment. Claimant was transferred to a burn unit from a local hospital on [REDACTED], having no recall of how he got burned, but having burns on his bilateral hands, nose, questionable mouth, and a fall. Claimant developed a right forearm compartment syndrome and required a fasciotomy on March 1, 2008. Claimant’s condition eventually improved to the point that he was transferred to a rehabilitation hospital for comprehensive inpatient rehabilitation at the end of March, 2008. It was noted that the claimant’s medical history is significant for cognitive impairment, secondary to severe seizure disorder at age 1, but that the claimant has not had any seizures for 15 years and no longer takes any medications. Claimant also has a history of peptic ulcer disease and possible sleep apnea.

Claimant was discharged with recommendations of further occupational therapy suggested at 5 times per week with parents providing additional range throughout the day. Therapy is to address improving upper extremity function, self-care independence, work and productive activities, functional communication, and cognitive/psychosocial skills.

Medical Examination Report of [REDACTED], from a physician at the burn center indicates that the claimant’s limitations will last more than 90 days.

Claimant’s school records indicate that he was qualified for special education classes as his IQ scores were in the 70’s.

Physical therapy notes indicate date of initial rehab to be May 6, 2008, with a diagnosis of right hand electrocution with neuropathy. Claimant was treated twice per week for 16 total visits, and did not miss any of them. Claimant had diminished sensation, compromised strength, decreased flexibility, decreased independence in work activities, and decreased range of motion.

[REDACTED], physical therapy notes indicate that claimant continues to have stiffness and weakness. Claimant would like to be employed in a restaurant and eventually be a cook again. Claimant has precautions to avoid cooking due to anesthesia of the graft on his right hand and forearm. [REDACTED] physical therapy re-evaluation indicates quotes the claimant as reporting less pain since beginning therapy and that he is able to complete more household chores.

[REDACTED] evaluation for Disability Determination Service of [REDACTED], indicates as claimant's chief complaints learning disability, epilepsy and electrocution burns to hands from March, 2008 for which he was hospitalized for a lengthy period of time. Claimant's skin graft was taken from his right thigh and covered the anterior surface of his forearm. Claimant had been recently released from physical and occupational therapy, and his grip has deteriorated since his release. Claimant had grand mal seizures starting at the age of 2, he was ultimately seen in the seizure clinic connected with the Children's Hospital at about age 4, and was seizure free within one year after beginning medication. At about age 12, the medication was weaned, and claimant has been free of any seizure activity for about the past 20 years. Claimant had a well healed graft the length of his forearm with some grafting on the hand. Claimant's grip strength was diminished on the right with 70% grip remaining. Dexterity was mildly impaired on the right, but claimant could pick up a coin, button clothing, and open a door. Range of motion studies of the joints is normal except in the right side, where motor strength in the arm is somewhat diminished. Claimant's grip on his right side

is impaired as even though he was grafted successfully for electrical burns of right forearm and hand, there was enough tissue and tendon damage.

Mental Status assessment of [REDACTED], also completed for Disability Determination Service states as claimant's alleged disability learning disability, epilepsy with being seizure free since 1990, and history of electrocution with burns on hands from 2008, notable scars on right forearm. Claimant's speech is clear and understandable to the examiner, and communication is adequate. Claimant's gait and posture are within normal limits, and his grooming, hygiene and dress are appropriate. Claimant is taking no medications. Claimant performs his activities of daily living independently with the support of his father for consistency. Claimant reports engaging in housekeeping, shopping, playing soccer with neighbors, driving, gardening, yard work including grass and snow removal, and laundry. Claimant cashes checks and pays bills with the assistance of his father, completes his own grooming, hygiene and dressing, he walks, plays soccer, and watches TV, goes to the movies and out to eat. Claimant reports having friends, completing errands and cooking simple meals, he makes his own medical and dental appointments, visits with family and friends, and reports soccer as his hobby.

Claimant reported he is not currently employed because he can't find a job. Claimant also reports his current health is "good" and health problems are limited grip strength in right hand. Claimant denied any inpatient or outpatient mental health treatment.

Assessment summary is that the claimant is friendly, pleasant and verbal, he communicates adequately, there is no impairment in his ability to understand, recall and carry out simple directions and instructions, and no impairment in his ability to make judgments with simple work related decisions. There is a moderate impairment in claimant's ability to understand, recall and carry out complex instructions.

There is a mild impairment in claimant's ability to multi-task, sequence and process instructions/directions, and to work in fast paced, time based environments. There is no impairment in claimant's ability to interact appropriately with the public, supervisors, and co-workers, to respond appropriately to usual work situations or to changes in routine. Based on the exam the claimant is able to understand, retain and follow simple instructions and generally restricted to performing simple, routine, repetitive, concrete, tangible tasks. WRAT achievement testing showed standard scores of 79 in reading and 72 in arithmetic. Diagnosis was borderline intelligence by history. Claimant's GAF is listed at 62.

Medical evidence has clearly established that claimant had an impairment (or combination of impairments) that had more than a minimal effect on claimant's work activities. See Social Security Rulings 85-28, 88-13, and 82-63. Claimant suffered extensive burns to his hands and was hospitalized for better part of March, 2008, followed by stay in a rehab center and then months of physical therapy. Claimant's record indicates that his condition lasted approximately 12 months. However, claimant's condition had improved and this Administrative Law Judge concludes that the claimant is eligible for MA and SDA only from March, 2008 through March, 2009. This conclusion is based both on medical evidence presented and claimant's own hearing testimony indicating that he drives every day different people that give him money to do so, grocery shops, does housework, rakes, plants flowers, does sewing by making pillows by hand, fixes computers by taking out microchips and replacing them for family, makes rock candies and peanut butter balls, and makes candles from a home kit. Claimant also testified that he recently helped a friend move and moved furniture, babysat for a friend with a 10 and an 8 year old, did outside work for a friend, removed wall paper, and that he does odd jobs for friends and family. Therefore, claimant is not disabled based on his medical impairments past March, 2009.

There is no evidence in the record indicating that claimant suffers severe mental limitation. The evidentiary record is insufficient to find 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 ongoing 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 trier of fact must determine if the claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the claimant's medical record will not support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

At Step 4, if claimant had not already been denied at Step 2, the Administrative Law Judge would have to deny him again based upon his ability to perform past relevant work. Claimant's past relevant work was working in fast food restaurants doing various simple labor jobs and cooking. Finding that the claimant is unable to perform work which he has engaged in in the past cannot therefore be reached and the claimant is denied 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 other 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).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

Claimant has submitted insufficient objective medical evidence that he lacks the residual functional capacity to perform tasks from his prior employment, or that he is physically unable to do at the very least sedentary and light work if demanded of him. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity to perform other work. 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 and light work, or possibly even medium work. Under the Medical-Vocational guidelines, a younger individual age 18-44 (claimant is age 31), with limited education and an unskilled work history who can perform even only sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.24.

The claimant has not presented the required competent, material, and substantial evidence which would support a finding that the claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). Claimant has presented evidence to show he had impairments of this nature for a closed period of 12 months, from March, 2008 to March, 2009, but not past this period of time. Although the claimant has cited medical problems, the clinical documentation submitted by the claimant is not sufficient to establish a finding that the claimant is disabled, other than for a period of time from March, 2008 to March, 2009. There is no objective medical evidence to substantiate the claimant's claim that the alleged impairment(s) are severe enough to reach the criteria and definition of disabled on an ongoing basis. The claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program, other than for the closed period of time cited.

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, 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 on an ongoing basis, but does meet this criteria for the 12 month period from March, 2008 to March, 2009.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department inappropriately denied claimant's MA, retroactive MA and SDA application, as he did meet the disability eligibility criteria from March, 2008 to March, 2009.

Accordingly, the department's decision as it pertains to the period of time from March, 2008 to March, 2009 is REVERSED. Department shall:

1. Process claimant's disputed March 13, 2008 MA and SDA application.
2. If claimant meets all financial and non-financial eligibility criteria, approve MA and SDA benefits based on the date of application through March, 31, 2009, for this closed period of time.
3. Issue the claimant any and all MA and SDA benefits he is entitled to receive based on March 13, 2008 application through March 31, 2009.

4. Notify the claimant of this determination.

Department's decision regarding ongoing MA and SDA ineligibility is UPHELD.

/s/ _____
Ivona Rairigh
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: __ October 7, 2009 __

Date Mailed: __ October 12, 2009

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.

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