

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: 2008-29939
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 11, 2009
Bay 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 March 11, 2009. 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 April 1, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On July 8, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On July 14, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On July 16, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On September 12, 2008, the State Hearing Review Team (SHRT) again denied claimant's application stating that the claimant is capable of performing other work, namely medium work per 20 CFR 416.967(c), unskilled work per 20 CFR 416.968(a), and under Vocational Rule 203.25.

(6) Claimant submitted additional medical information at the hearing that was forwarded to SHRT for additional review.

(7) On March 31, 2009, SHRT once again denied claimant's application stating that the claimant was capable of performing sedentary, light and medium unskilled work.

(8) Claimant is a 49 year-old man whose birth date is [REDACTED]. Claimant is 5' 8" tall and weighs 180 pounds, and claims he was 145 lbs. but gained the weight due to the medications he is on. Claimant attended school through 10th grade and does not have a GED. Claimant is able to read and write, and does have basic math skills.

(9) Claimant states that he last worked in September, 2007 for 7 months at a [REDACTED] [REDACTED] where he was injured while rolling over a steel beam. Claimant also worked for another company from [REDACTED] when he was hurt again, and from [REDACTED] at a third company where he was hurt while picking something up. Claimant has been a [REDACTED] all his adult life.

(10) Claimant's work injuries resulted in hernias.

(11) Claimant alleges as disabling impairments: 4 umbilical hernias that have weakened his stomach, bi-polar condition, ADHD, and possible schizophrenia.

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 year [REDACTED]. 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 that has lasted or is expected to last for duration of at least 12 months.

The objective medical evidence on the record includes Psychiatry Consultation report of [REDACTED] when the claimant was seen with complaints of chronic low back pain. Claimant was taking Vicodin at the time. Examination of claimant's spine did not reveal any abnormal curvatures, no kyphosis, no scoliosis, and no leg indiscrepancy. Muscle strength was 5/5 at the bilateral lower extremities, and sensory examination of the right leg revealed some diffuse patchy numbness in the right peroneal nerve distribution. Range of motion of claimant's thoracolumbar spine was grossly within functional limits. Claimant was scheduled for

electrodiagnostic testing of the right lower extremity to rule out peripheral nerve entrapment (Department's Exhibit I, pages 6 and 7).

EMG study of [REDACTED] was normal there were no finding of lumbar radiculopathy or plexopathy, and no findings of peripheral mononeuropathy or distal polyneuroropathy. EMG testing was unremarkable, it was noted that claimant's leg pain could be most likely connective tissue pain, and that physical therapy would be beneficial (Department's Exhibit I, page 5).

Physical therapy progress note for period of time from [REDACTED] to [REDACTED] quotes the claimant as saying he feels in better shape, is stronger and physically feels better, but still having pain with activity. Claimant reported yesterday he rode snowmobile, quad, plowed snow and shoveled, and this morning is very stiff and frustrated because of having pain. Claimant noticed a bump on stomach yesterday and thinks it is a hernia again (as previous 3 hernias). Assessment was that claimant has improved physically but still very active and doesn't really give the back a chance to rest/heal, and his pain remains very local with no radiculatis (Department's Exhibit I, page 184).

In [REDACTED] claimant was examined for an incisional hernia, and this hernia was repaired with mesh (Department's Exhibit I, pages 166 to 168).

Progress Note of [REDACTED] doctor visit states that the claimant's chief complaint is chronic back pain. Physical examination of claimant's spine does not reveal any abnormal curvature, manual muscle testing is 5/5 in both lower extremities, sensory examination to light touch is grossly unremarkable, range of motion of the spine and legs is within functional limits, deep tendon reflexes are 1+ symmetric in both legs, straight leg raising is negative, and no facet syndrome could be appreciated during this examination. The examining physician indicates that he discussed with the claimant the results of the urine toxicology that displayed marijuana and he

stated he had used marijuana all his life. This was of concern as the clinic protocol is to not prescribe medications for patients that are using recreational drugs. Claimant was strongly advised to stop marijuana or to look for a physician that will take over his medications for him (Department's Exhibit I, page 112).

Claimant was sent a letter from his doctor's office on [REDACTED] telling him that it has been brought to their attention on June 6, 2008, by his insurance company that he has been using excessive narcotic medications from multiple physicians. The doctor's office advised the claimant he is being discharged from their practice effective immediately, and no further medications refills will be given (Department's Exhibit I, page 114).

Claimant had an x-ray of his right knee on [REDACTED] after hitting his knee on a boat. There was no evidence of fracture or dislocation (Department's Exhibit I, page 157). MRI of claimant's lumbar spine of [REDACTED] showing no herniation, canal stenosis or nerve root impingement, and is unremarkable (Department's Exhibit I, pages 144 and 145).

Medical Examination Report completed on [REDACTED] lists as history of claimant's impairments incisional hernia repair in [REDACTED]. Claimant was returned to full work duty as of [REDACTED] (Department's Exhibit I, pages 215 and 216).

A letter from claimant's doctor dated [REDACTED] states that he is being treated for "somatic dysfunction of the lumbar spine". No mention of any limitations is made (Department's Exhibit II, page 218).

A letter from LIST Psychological Services dated [REDACTED] states that the claimant is participating in outpatient therapy, he began his treatment there [REDACTED] and has been diagnosed with Bipolar Disorder NOS. Claimant's treatment consists of both individual counseling and medication management (Department's Exhibit II, page 219).

New medical information claimant submitted following the hearing consists of a 4 page report by an M.D. with Medical Rehabilitation Solutions dated [REDACTED] completed after meeting with the claimant for an independent medical evaluation. This report summarizes claimant's account of his past medical problems and claimant's medical records, as well as describing examination conclusions. Claimant stated he has had hernias caused by work injuries, and some back pain since 2002, which was his second abdominal surgery. This back pain persisted until claimant's surgeon corrected the umbilical hernia and did a revision in early 2008. It is noted that a physiatrist did document some pain in claimant's right leg and did an EMG, which was reassuring for absence of radiculopathy or neuropathy. Claimant described his pain as constant. He has no previous trauma or surgeries to the neck of back. Claimant knows how to do some prone exercises and four-point exercises from previous physical therapy, but has not been doing these very much. MRI studies of claimant's lumbar spine of [REDACTED] show no abnormalities of disc, vertebral alignment or bones, and treating physician reassured him that he did not need surgery, but that he could benefit with physical therapy. Claimant had an umbilical hernia in 2002 due to work injury, but returned to work without restrictions in three months. Claimant worked without restrictions or problems from [REDACTED] despite the fact that he gives history of back pain in that period. Claimant was not seeking medical attention, as he can recall. Claimant stated he had second hernia operation in [REDACTED] but returned to work after five months without restrictions. Claimant worked until late [REDACTED] with the injury, was given a return to work slip, but his employer could not accommodate him due to low workload. Claimant remained off work and required reoperation in 2008, and during that time began treatment for his back condition.

Claimant wore reader glasses, but did not require prescription glasses at that time. Claimant was living with his wife who was on Social Security Disability for her medical

condition (claimant testified at the hearing that he has now been separated from his wife for about 3 weeks). Claimant had applied for Social Security, but his claim was denied in May, 2008. Claimant was diagnosed with back pain with sacroiliac discomfort, believed to be secondary to work-related twisting and lifting activities, aggravated by loss of abdominal support due to his umbilical hernia surgeries and repairs. Rehabilitation care, exercise and possible injection are required, but not ongoing use of narcotics. Lumbar corsetry may also be helpful in optimizing claimant's comfort in function up to twenty pounds handling close to body or twenty-five pounds direct lifting without carrying. Corsetry can be used to increase claimant's capacity to twenty five to thirty pounds, but this would not compensate for the altered mechanics or allow the claimant to go back to heavy steel work despite his excellent upper and lower extremity function and intact neurological status. Claimant's abdomen and incisional area from hernia reconstructions remains vulnerable for twisting, reaching or lifting activities exceeding twenty pounds.

Claimant's bipolar disorder is currently under good management, and previous concerns about drug use appear to be linked to untreated mental disorder, which is now under excellent control and medical supervision. Claimant is disabled from his previous work as an ironworker and job redirection into light work is supported. Corsetry could be used to enhance work performance, but it is not needed on a daily basis, as claimant's overall posture and ergonomic knowledge is reasonable. Claimant is not expected to return to ironwork or unrestricted lifting even with rehabilitation services.

Claimant testified that he is in constant stomach pain on a daily basis, but that he is not on pain medications. Claimant also testified that he can sit or stand for only 15 minutes, and that he can walk 1-2 blocks without crutches, which he should use because his stomach pain affects his back. This Administrative Law Judge has carefully reviewed claimant's medical record and

cited relevant portions of it above, and finds that the medical examinations and tests performed on the claimant do not support his claims of constant pain and drastically diminished ability to function, as he presents. Claimant was released for work with no limitations in [REDACTED], after his last hernia surgery. Claimant's record shows that he engaged in activities that caused him back pain and stomach hernia problems, such as snowmobiling, quad riding, plowing and shoveling snow shortly after the hernia surgery, and boating as he hurt his right knee when hitting it on the boat in [REDACTED]. Physical therapy notes from [REDACTED] indicate that the claimant continues to lead an active lifestyle and does not give his back the rest it needs. The Administrative Law Judge does not doubt that the claimant's hernia surgeries have weakened his stomach to the point that he is unable to engage in activities and work that would require heavy lifting, straining, etc. However, claimant's medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

There is no evidence in the record indicating that claimant suffers mental limitations. Independent medical evaluation of [REDACTED] notes that the cognitive examination shows insight, normal orientation, perception and non-disturbed thought process, mild pressure of speech, good attention, good memory, good judgment regarding safety and ergonomics of his back and abdomen. Claimant has apparently been in outpatient therapy for a bipolar disorder since October [REDACTED] however the only evidence of this treatment is a brief letter of [REDACTED] that does not document any type of mental limitations for him. Claimant testified that he now has "possible schizophrenia" because he is homebound, feels like he can hurt himself, and his mind races. No medical records to support this possible diagnosis have been provided. 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 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.

At Step 4, if claimant had not already been denied at Step 2, the Administrative Law Judge would consider him unable to perform past relevant work. Claimant's past relevant work was doing ironwork and welding, and he cannot perform such work according to the independent medical evaluation of November, 2008. Finding that the claimant is unable to perform work which he has engaged in in the past could therefore be reached 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's medical record shows that his own doctor(s) have released him for work without any limitations as recently as [REDACTED] after his last hernia surgery, and have found no issues with his back problems/pain that would prevent him from working or justify limitations in performance of work. However, the independent medical evaluation of [REDACTED] does note that the claimant can handle up to twenty pounds close to body or twenty-five pounds direct lifting without carrying. Lumbar corsetry may be helpful in optimizing claimant's comfort while doing this type of lifting. Claimant should be redirected into light work. This evaluation is found to be credible in the light of claimant's repeated abdominal hernia issues. 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. Under the Medical-Vocational guidelines, a younger individual (age 49), with limited education and only unskilled work history who can perform even only sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.18. .

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). 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. 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. The claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

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.

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 sedentary and light work even with his alleged impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED, and it is SO ORDERED.

/s/

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

Date Signed: April 13, 2009

Date Mailed: April 14, 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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