

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: 2008-31451
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 7, 2009
Kent 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 7, 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 retroactive Medical Assistance (retro MA-P)?

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 14, 2008, claimant filed an application for Medical Assistance benefits alleging disability.
- (2) On August 19, 2008, the Medical Review Team denied claimant's application stating that claimant was capable of doing past relevant work.

(3) On August 19, 2008, the department caseworker sent claimant notice that his application was denied.

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

(5) On September 29, 2008, the State Hearing Review Team again denied claimant's application stating that the claimant had a non-severe impairment/condition per 20 CFR 416.920(c).

(6) Claimant is a 52 year-old man whose birth date is [REDACTED] [REDACTED]. Claimant is 5' 6" tall and weighs 155 pounds. Claimant has a high school diploma and couple of semesters of college in general education courses, and can read, write and do basic math.

(7) Claimant is currently employed as a dishwasher at a restaurant, job he started 2 ½ weeks ago, 18-20 hours per week at \$7.50 per hour.

(8) Claimant had previously been in a pilot program for ex-offenders from end of January, 2008 to March, 2008, packaging in a factory. Claimant has been in and out of prison since 1990's, last time being from 2003 to May, 2007 in a state prison, then in federal prison from May, 2007 to December, 2007. Claimant states that he worked in the prison kitchen and as a porter while incarcerated.

(9) Claimant alleges as disabling impairments Hepatitis C, back and leg problems, and chronic depression.

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).

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 combinations 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 employed 18-20 hours per week as a dishwasher and gets paid for such work at \$7.50 per hour. Determination that the claimant is engaged in substantial gainful

activity could therefore be reached at this step, and claimant would be disqualified from receiving disability and denied at this step. If the claimant was not denied at Step 1, the analysis would proceed.

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.

Claimant's medical record consists of Michigan Department of Corrections (MDOC) medical notes pertaining to exams and medications he was given while incarcerated. While claimant testified that he weighs 155 pounds and that he had lost 30 pounds in the last 2 ½ months prior to the hearing due to Hepatitis C that causes him nausea and inability to sleep or eat, MDOC records show claimant's weight to be 160 pounds throughout his incarceration, so this seems to be his normal weight.

Claimant was seen on April 30, 2008, by a doctor he saw in 2000 for the same problem, Hepatitis C. This doctor states that in 2000 claimant's liver function tests were nearly normal. Claimant was then lost to follow-up, but in the interim he apparently has been stable. Most recent liver tests are nearly normal, and he has no obvious evidence of cirrhosis. Claimant was 5'6," weighed 160 pounds, his blood pressure was 130/82, and had no signs of chronic illness (Department's Exhibit I, pages39 and 40).

████████████████████ Diagnostic Clinical Evaluation of ██████████ indicates that the claimant came to outpatient therapy as referred by his primary care physician for psychiatric help. Claimant reported that he was in and out of jail or prison from 1985 to 1992, was divorced in 1998 and has had problems with sleep, depression and anxiety since then. Claimant requested a medication change as he is only sleeping 3-4 hours per night, his mind keeps racing, he is jittery, and he can't sit still. Claimant reported that he quit using drugs in

1998 after he contracted Hepatitis C, but that he has been drinking again, a six pack per day and has drunk 20 of the last 30 days. Claimant was diagnosed with generalized anxiety disorder, depressive disorder and alcohol dependence, and while he sees a benefit from being on medications, he is not willing to commit to quitting drinking or making lifestyle changes that could support more effective coping. Claimant was drinking while taking antidepressants and therefore not doing what he needed to take care of his mental health (Departmental Exhibit #I, pages 25-32).

Exam of [REDACTED] [REDACTED] indicates that the claimant was in no acute distress, had a steady gait, was well nourished, and his respiratory, cardiovascular and gastrointestinal systems were normal. No deformity or misalignment of bones was noted, no muscle atrophy or crepitus, and no limitations in range of motion or muscle strength. Claimant was alert and oriented x 3, cranial nerves intact, muscle tone symmetrical, muscle strength adequate, no sensation problems noted, deep tendon reflexes equal and symmetrical, full range of extraocular movement, and no tremors were noted. No evidence of impaired judgment, cognitive impairment, hallucinations, delusions, or disorder of thought formation was noted. (Department's Exhibit I, page 35).

Claimant's medical record does not establish that he does have a severe impairment or combination of impairments which have lasted or will last the durational requirement of 12 months or more. 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 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, claimant testified on the record that he is living with a friend, has a driver’s license, cooks simple meals for himself, grocery shops, cleans the home he lives in, and cuts grass. Claimant further testified that he is in constant back and leg pain for which he takes aspirin. Claimant’s medical record shows no evidence of back issues that would cause such constant pain. Claimant can sit for 1 hour, stand for 1 hour, and walk for 15-20 minutes. Once again, claimant’s medical record contains no evidence of a medical reason for claimant’s stated inability to sit, stand or walk for extended periods of time. Claimant is currently working as a dishwasher, worked in a packaging factory after getting out of prison in January, 2008, and worked in the prison kitchen and as a porter (job that entails various sanitation duties in prison setting) while incarcerated. Conclusion that the claimant cannot do his past relevant work cannot be reached, as evidence presented by him does not establish such inability.

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 work.

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).

Even if claimant's testimony that he suffers from daily back and leg pain is given great weight, however unsupported by presented medical evidence, claimant should be able to perform light work at least. Claimant's complaints of pain are out of proportion to the objective medical

evidence contained in the file as it relates to claimant's ability to perform work. Claimant is performing light work at the present time as a dishwasher.

Claimant also testified on the record that he suffers from chronic 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 his use of alcohol was problematic in the past, and that as of May 1, 2008, he was drinking a six pack of beer per day. Claimant's use of alcohol could very well be a contributing factor for his alleged mental 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. 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 at least light work even with his impairments. Under the Medical-Vocational guidelines, an individual closely approaching advanced age, even with limited education and a history of unskilled work who is limited to light work is not considered disabled pursuant to Medical-Vocational Rule 202.10.

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 and retroactive Medical Assistance benefits. The claimant should be able to perform a wide range of at least light work even with his 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: May 28, 2009

Date Mailed: May 29, 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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