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: 2009-14801
Issue No: 2009
Case No: [redacted]
Load No:
Hearing Date:
May 21, 2009
Montcalm 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 May 21, 2009. Claimant personally appeared and testified. Also appearing and testifying on claimant's behalf was his mother S. R. and his brother C.R.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and retroactive MA?

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 September 8, 2008, claimant filed an application for Medical Assistance and retroactive MA benefits alleging disability.

(2) On December 18, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On December 23, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On January 29, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On March 16, 2009, the State Hearing Review Team (SHRT) again denied claimant's application he was capable of performing other work, namely medium work per 20 CFR 416.967(c) and Vocational Rule 203.28.

(6) Claimant submitted additional medical information following the hearing which was forwarded to SHRT for review. On June 16, 2009 SHRT once again denied the claimant saying he was capable of performing other work.

(7) Claimant is a 30 year-old man whose birth date is [redacted]. Claimant is 5' 11" tall and weighs 340 pounds, down from 400 pounds he used to weigh at. Claimant has a high school diploma and is attending technical school in computer networking for an Associate Degree in this field. Claimant travels to Grand Rapids 3 times per week, 50 miles one way, to attend classes that last 3-4 hours.

(8) Claimant states that he last worked in September, 2008 at a packaging plant for 1 ½ years. Claimant missed the day of work after the holiday and acquired too many points for absences, and was considered a job quit. Claimant also worked at [redacted] on and off part time for the last 15 years, at a saw mill, farm, and at production control for an aero space engineering business from 2002 to 2003.

(9) Claimant alleges as disabling impairments: low back pain and ACL reconstructions.

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 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 <u>not</u> 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 September, 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 that has lasted or is expected to last for duration of at least 12 months.

The objective medical evidence on the record includes a report of [redacted], for follow up status post left knee ACL reconstruction and partial lateral meniscectomy. Claimant had returned to essentially full activities without any restrictions or complaints, his knee feels better than it did prior to the operation and is very happy with the results. (Department's Exhibit I, page 13).

Claimant is seen by a doctor in June, 2007 for back pain after he hurt his back putting a new dock. Claimant is given Lortab to take for severe pain only. Claimant is also seen in the summer of 2008 for back pain complaints and again given Lortab. (Department's Exhibit I, pages 7-12, and 15-17).

Additional medical evidence provided by the claimant following the hearing consists of a hospital visit of [redacted], after claimant bent over to fill up a gas tank and had a sudden onset of low back pain that radiated from his back to his buttocks. Claimant stated the pain was aggravated with bending movement, but denied any bowel or bladder symptoms, groin numbness or tingling or any radicular pain. Physical exam revealed no cyanosis, clubbing or edema. Claimant did have some difficulty straightening his left leg on which he had surgery previously. Claimant's sensation was grossly intact, percussion of the thoracolumbar spine was negative for any tenderness, and there was moderate paraspinal splinting, right great than left. Claimant was diagnosed with lumbar strain and myospasm, and prescribed medication for muscle spasm and Vicodin for pain.

Claimant was again seen at the hospital for laceration to leg on [redacted] Claimant reported that he was utilizing a back-pack type leaf blower with his right hand and in his left hand a machete was used to cut some brush. Claimant subsequently reached in an awkward fashion and the machete struck his left lower extremity. Claimant denied any inability to move his toes or fingers, but did report copious bleeding for which he applied direct pressure. Claimant's cut was repaired and he was placed on antibiotics.

Claimant again came to the hospital on [redacted], due to having increasing midline back pain, extension into the right lateral butt cheek region. Physical examination of claimant's back showed no midline tenderness, but he had exquisite left para and right paraspinous muscle

tenderness. Claimant's straight leg raise was negative bilaterally and he had normal gait. Claimant was given intramuscular Toradol and Flexeril and a short course of Vicodin.

Other medical records provided are from visits to the doctor for repeated Lortab prescriptions for back pain. On February 4, 2009, claimant called and stated he had lost his Lortab and that he is in a lot of pain, and was told to be more responsible with next prescription. Claimant was also advised he should take this controlled substance more carefully. Claimant continued to claim severe back pain and to request Lortab on a weekly basis through March, April and May, 2009. In April, 2009 doctor notes also indicate that sensible diet and weight control are strongly recommended.

Claimant's hearing testimony is that he cannot work at any job, that he mows the lawn on a tractor if he feels good, that he hunts for deer and fishes on pontoon boat as he lives on a small lake, and that he works on the computer for his homework and watches TV. Claimant also testified that he can sit for a long period of time, stand for 1 hour and walk 100 yards.

There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical impairment. This Administrative Law Judge finds that the medical record combined with claimant's own hearing testimony about his physical condition is insufficient to establish that claimant has a severely restrictive physical impairment. Claimant has not provided any objective evidence of his back problems such as an MRI that would show some type of abnormality that would cause the pain he reported and for which he received pain medications on a regular basis. Medical examinations do not reveal any serious issues with claimants back and only cite his subjective complaints of pain. Claimant was well enough to carry a leaf blower and use a machete at the same time to do yard work in March, 2009 several months after he applied for MA claiming disabling impairments. Therefore, while claimant may

have a disabling back condition as he, his mother and brother testified to, information presented does not establish the existence of such condition.

There is no evidence in the record indicating that claimant suffers mental limitation and he claims none. 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, 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 a packaging plant, at [redacted], on a farm and in production control. Claimant did appear to miss work at the packaging plant around the July 4th holiday and again at Labor Day holiday, and claims he was considered a job quit because of back pain. As medical evidence presented does not objectively establish that the claimant has a back condition that would affect his ability to perform his past relevant work, 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 least medium 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, light and medium work. Claimant is currently attending college three times per week, drives 100 miles round trip to get to college, and then sits in classes 3-4 hours per day. Even if claimant's testimony about his back condition is given great weight and it is said he can only do sedentary work, under the Medical-Vocational guidelines, a younger individual age 18-44 (claimant is 30 years of age), illiterate or unable to communicate in English (claimant has a high school diploma and attends college), and with an unskilled work history or no work history at all who can perform only sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.23.

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.

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. The claimant should be able to perform a wide range of sedentary, light and medium 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: August 28, 2009

Date Mailed: September 1, 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.

IR[redacted]

cc: [redacted]