

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: 2009-15529

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 27, 2009

Ingham 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 27, 2009. Claimant personally appeared and testified. Also appearing and testifying on claimant's behalf was his sister [REDACTED]

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (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 August 13, 2008, claimant filed an application for Medical Assistance alleging disability.

(2) On December 29, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On January 9, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On February 9, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On March 19, 2009, the State Hearing Review Team (SHRT) determined that the claimant was capable of performing other work, namely unskilled light work per 20 CFR 416.967(b) and 20 CFR 416.968(a), and Vocational Rule 202.20.

(6) Claimant presented additional medical information following the hearing for which the record was left open. This information was forwarded to SHRT for additional review. On June 23, 2009, SHRT once again determined that the claimant was capable of performing other work, namely sedentary and light unskilled work per Vocational Rule 202.20 and 201.27.

(7) Claimant is a 49 year-old man whose birth date is [REDACTED]. Claimant is 5'11" tall and weighs 200 pounds after gaining 20 lbs. due to lack of mobility. Claimant has a high school diploma and 1 year of trade school training as a hair dresser.

(8) Claimant states that he last worked in July 2007 as a supervisor for a magazine distribution company, job that lasted him 7 years and that he quit as he could not perform it physically. Claimant also owned a consignment store in the early 90's and a hair saloon in the 80's.

(9) Claimant is an inactive Michigan Rehabilitation Service (MRS) client because MRS wanted him to return to a customer service job but he could not work. Claimant states he was driving 1300 miles in his previous job and could not do that any more.

(10) Claimant lives with his sister and niece and receives SDA based on being MRS client and food stamps.

(11) Claimant alleges as disabling impairments: fibromyalgia, neck and back pain, chronic fatigue syndrome, chronic shoulder pain, balance problems due to fibromyalgia, memory issues, hand/arm problems, herniated disc in the neck and bulging disk in the lower back.

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 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 2007. 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 consists of an MRI of claimant's neck of September, 2005, due to having a mass on the side of his neck. Findings were those of a common benign tumor consisting of fatty cells. (Department's Exhibit I, page 43). MRI of

claimant's lumbar spine of June, 2006 due to complaint of lower backache for one year, radiating down the bilateral legs, showed mild circumferential bulging of the intervertebral disks without focal disk herniation at L4-L5 and L5-S1. (Department's Exhibit I, page 46).

History and Physical Report of [REDACTED], states that the claimant has a lesion on his face. Last physical exam was in [REDACTED]. Claimant's medical issues are listed as fibromyalgia, low chronic back pain, chronic neck pain, and chronic shoulder pain, long history of myofascial pain syndrome, narcotic dependence, opioid induced androgen deficiency, and sacral somatic dysfunction. Claimant was feeling well, his neck, respiratory, cardiovascular and gastrointestinal systems were normal, he was 71 inches tall and weighed 188 lbs., blood pressure of 120/70 and regular pulse, he was well groomed, well nourished, well developed and in no acute distress. Claimant mental status was alert and oriented. Claimant's facial lesion was removed and sutured. (Department's Exhibit I, page 4).

Medical Examination Report of [REDACTED], lists as claimant's current diagnosis severe fibromyalgia, chronic fatigue, chronic pain syndrome, and radiculopathy C spine. Claimant's examination areas are normal except for atrophy of shoulder rotator cuff muscles and decreased range of motion in shoulders, and depression that affects long term memory. Claimant's condition is listed as deteriorating, he can only lift less than 10 lbs. and stand and/or walk less than 2 hours in an 8-hour work day, and he cannot use either of his hands/arms for repetitive actions, but can operate foot/leg controls. Claimant can meet his needs in the home. Physician completing the report does not indicate when she first examined the claimant or the date of last examination. (Department's Exhibit I, pages 40 and 41). Medical Needs form of September 18, 2008, completed by the same physician indicates that the claimant does not need

special transportation, and that he does not have a medical need for assistance with any personal care activities. (Department's Exhibit I, page 42).

Medical Report of October, 2008 from a doctor with [REDACTED] [REDACTED] completed for department's evaluation indicates as claimant's past medical history fatty tumor removed from his neck in 2005 which was not cancerous, traumatic injury to his right ankle in the 1990's, and tonsillectomy as a child. Claimant had a depressed affect and admitted to depression, but denied suicidal or psychotic ideation. Physical examination revealed a well-developed, well-nourished person in no acute distress. Claimant was 72 inches tall and weighed 193 lbs., his pulse was 105 and blood pressure 148/82. Claimant's upper extremities were observed to be equal, there was no evidence of atrophy, and he did have diffuse tenderness to any gentle touching of the muscles that includes medial and lateral epicondyles, anterior and posterior shoulders, and the metacarpals of the hands. There was no swelling or deformity noted, distal extremities had good pulses, and there was no pedal edema. Claimant demonstrated slow but normal range of motion of the neck, back, shoulders, elbows, wrists, hands, hips, knees, ankles, and feet. Neurological exam was unremarkable, claimant could get in and out of a chair and on and off the exam table. Claimant disputed this in the hearing stating he had to be "pulled and helped" off the table. Claimant demonstrated heel-toe gait without needing any type of assistive ambulatory device. Assessment was that of a long-standing history of fibromyalgia, chronic fatigue syndrome, and depression which is presently not being adequately addressed. Claimant stated he had a cervical and lumbar degenerative disc disease without any acute neurologic deficits or bowel or bladder problems. Claimant also alleges that he has chronic hand pain which he alleges is secondary to CTD although he also describes himself as being primarily a supervisor at his merchandising company for the last seven years where he would do extensive

driving, what he describes as putting in 1300 miles a week checking various venues.

(Department's Exhibit I, pages 29-31).

There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. While the Medical Examination Report completed by claimant's physician cites severe restrictions for the claimant, there are no objective medical findings to support such restrictions, and they appear to be based on claimant's subjective report of pain and inability to fully function. Examining physician cites as only examination area that is not normal atrophy of claimant's shoulder rotator cuff muscles, and her conclusion is based on claimant showing poor abduction of both arms during the exam. The same physician then indicates on Medical Needs form that the claimant does not need any assistance with personal care activities, even though the claimant's hearing testimony is that he cannot even get out of bed on some days, and needs help with every day activities from his family, including meal preparation. The restrictions cited by claimant's physician cannot therefore be given great weight, as it appears the basis for such restrictions is mainly claimant's subjective reporting of pain (symptoms) he suffers from.

Claimant's family doctor also submitted a [REDACTED], letter stating that the claimant was seen in her office on [REDACTED] and after evaluation she determined that his condition is deteriorating and is expected to continue to deteriorate. However, there are no indications on what type of new medical findings this assessment is based on. There are no medical findings that claimant has significant muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

It is noted that claimant's 2007 medical record cites "narcotic dependence", but there is no clarification as to what type of narcotics claimant was using. Claimant did hold a job for 6-7 years up to 2007 that involved driving 1300 miles during the time he testified he had suffered from fibromyalgia and was in considerable pain. Claimant also testified that he will be getting Methadone to treat his reported pain, and this drug had been prescribed to him the day before the hearing. Claimant denied any drug use during his lifetime, but it remains questionable if the claimant had issues with prescription drug abuse that developed into "narcotic dependence" described in 2007 medical records, and whether continued narcotic dependence is affecting claimant's present inability to function and causing him physical pain that is requiring prescription of Methadone. Hearing testimony of claimant and his sister in addition to two letters written by long time friends as to claimant's medical condition and how it has changed him over the years is certainly compelling, but his medical record does not provide the basis to support the described severity of the condition.

There is no evidence in the record indicating that claimant suffers 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 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 in customer service as a supervisor for a magazine distributor, consignment store owner, and owning and managing a hair saloon. Claimant testified that Michigan Rehabilitation Service (MRS) found him able to return to customer service, and this conclusion is reached by counselors trained in evaluation a persons' medical condition and vocational abilities. 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 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. Under the Medical-Vocational guidelines, a younger individual age 45-49 (claimant is 49), with limited education and an unskilled work history who can perform only sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.18. Claimant has a high school diploma and additional training, and has held a variety of jobs. Individual of claimant's age that is able to perform light work is also not considered disabled pursuant to Medical-Vocational Rule 202.20.

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 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: _____

Date Mailed: _____

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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