

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: 2009-17603
Issue No: 2009, 4031
Case No. [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 11, 2009
Macomb County DHS

ADMINISTRATIVE LAW JUDGE: Tyra Wright

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 June 11, 2009. Claimant appeared and testified. Two eligibility specialists represented the Department.

ISSUE

Did the Department properly determine that Claimant was not disabled for purposes of the Medical Assistance (MA), retroactive MA, and State Disability Assistance (SDA) programs?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) Claimant attended a review of his Food Assistance Program case in February 2009. At that time, Claimant reported that he was disabled. His caseworker completed medical forms and asked for verification of certain information.

- (2) On January 23, 2009, the case was sent to the Medical Review Team (MRT) for a determination. The MRT determined Claimant was not disabled on the ground that he could “perform other work.” Therefore, the Department found him not eligible for State Disability and Medicaid.
- (3) On March 13, 2009, the State Hearing Review Team also denied eligibility again on the grounds that Claimant is “capable of performing other work.”
- (4) Claimant was [REDACTED] years old with a birth date of [REDACTED] at the time of the hearing. Claimant is 5’9” and weighs 195 pounds. He is right hand dominant. Claimant completed high school. Claimant has worked for 13 years in the construction industry as a [REDACTED]. Before joining the construction industry, he worked briefly as a pizza maker. Currently, Claimant is not employed. He was last employed as a [REDACTED] on August 10, 2006. At that time, he also worked part-time at a [REDACTED] facility. He injured his shoulder while on the job at [REDACTED] on August 10, 2006. He has not worked since that injury.
- (5) Claimant does not smoke, drink alcohol or use drugs.
- (6) Claimant has a driver’s license but does not own a car.
- (7) On August 10, 2006, Claimant was working at [REDACTED] when a supervisor asked him to help unload another truck. While Claimant was working that truck a [REDACTED] co-worker tossed a 70-pound box to Claimant. The box hit Claimant in the right shoulder and neck, causing his shoulder injury.
- (8) The accident resulted in a pinched nerve in his neck, called a Cervical Radiculopathy and a rotator cuff injury.

- (9) The injury required shoulder surgery which Claimant had shortly after the incident. Claimant complains of pain in his shoulder, neck, arm and hand on the right side.
- (10) Claimant takes Vicodin, a pain medication, and a muscle relaxant. About one week before hearing, Claimant completed medication described as a steroid treatment pack, Prednisone that was taken for one week to address his shoulder pain.
- (11) Due to the pain, Claimant asserted that he cannot lift more than five pounds with his right hand, cannot lift his right arm over his head, and cannot grasp or grip items with his right hand without pain. Claimant cannot carry anything heavier than 15 pounds with both hands.
- (12) Claimant once enjoyed many outdoor activities such as throwing a football to his son, fishing, building things and working on cars. Since his shoulder injury claimant is unable to do any of those hobbies.
- (13) Moreover, Claimant contends that he cannot work at any job due to his injury. Claimant went to an emergency room for treatment on his shoulder last month because of pain in his right arm and shoulder. In addition, his right hand went numb. A doctor prescribed the steroid Prednisone as treatment.
- (14) Claimant saw two doctors within the last month regarding his shoulder injury.
- (15) The Department received Claimant's hearing request on February 27, 2009.

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 (formerly known as the Family Independence Agency) administers the MA

program pursuant to MCL 400.10, et seq., and MCL 400.105. Department policies for FAP and MA 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 (formerly known as the Family Independence Agency) 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 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

Pursuant to 20 CFR 416.920 a five step sequential evaluation process is used to determine disability. An individual's current work activity, the severity of the impairment, the residual functional capacity, past work, age, education and work experience are evaluated. If an individual is found disabled or not disabled at any point no further review is made.

The first step is to determine if an individual is working and if that work is "substantial gainful activity" (SGA). If the work is SGA, an individual is not considered disabled regardless of medical condition, age or other vocational factors. 20 CFR 416.920(b). In this case, Claimant is not employed. He last worked in August 2006 before being injured while working a part-time job at [REDACTED].

Secondly, the individual must have an impairment that must have lasted or must be expected to last for a continuous period of at least 12 months. This is the “durational requirement.” 20 CFR 416.909. In this case, Claimant’s impairments, a rotator cuff injury to his right shoulder and neck can be expected to last longer than 12 months.

The third step in the process is to assess whether the impairment or combination of impairments significantly limits an individual’s physical or mental ability to perform basic work activities. If these abilities are not significantly limited, an individual does not have a severe impairment and is therefore not disabled. 20 CFR 416.920(c). In this case, the Claimant’s impairments significantly limit his physical ability to perform basic work activities. Claimant complains of severe pain in the shoulder, neck, arm and hand on his right side. He cannot lift more than five pounds with his right hand. Claimant still experiences pain and within weeks of this hearing was prescribed a steroid pack to address the pain. He also regularly takes Vicodin pain pills as well as a muscle relaxant.

In the fourth step of the process the social security listing in appendix 1 is used. If the impairment or combination of impairments meet or is the medically equivalent of a listed impairment as set forth in appendix 1, the individual is considered disabled. If not, vocational factors are considered. 20 CFR 416.920(d). In the instant case, Claimant’s combined impairments are not the medical equivalent of a listed impairment under Part 404, Subpart P. Listing of Impairments.

In the fifth step an individual’s residual functional capacity (RFC) is considered in determining whether disability exists. Part 404, Subpart P, App. 2. An individual’s age, education, work experience and skills are use to evaluated whether an individual has the residual functional capacity to perform work despite limitations. 20 CFR 416.920(e). In the present case, Claimant is a younger individual, with a high school education, and an unskilled work history.

Under rule 201.28 at Table No. 1, Residual Functional Capacity: Maximum Sustained Work Capability Limited to Sedentary Work as a Result of Severe Medically Determined Impairment(s), Claimant is not disabled. Therefore, it is found that Claimant does not qualify for MA based on disability and is not disabled for purposes of the SDA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant does not meet the definition of medically disabled under the MA program as of his application on January 23, 2009. Retroactive MA and SDA also are not applicable.

Accordingly, the Department's determination is AFFIRMED.

/s/ _____
Tyra L. Wright
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 06/18/09

Date Mailed: 06/22/09

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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