

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: 2009-19333
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 17, 2009
Gladwin 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 June 17, 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 October 14, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On February 24, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On February 27, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On March 6, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On May 4, 2009, the State Hearing Review Team (SHRT) again denied claimant's application stating he is capable of performing other work, namely medium unskilled work per Vocational Rule 203.28.

(6) Claimant presented additional medical information following the hearing that was submitted to SHRT for additional review. On June 24, 2009, SHRT once again determined that the claimant was capable of performing other work.

(7) Claimant is a 35 year-old man who is 5'7" tall and weighs 210 pounds. Claimant completed a GED and can read, write and do basic math.

(8) Claimant states that he last worked in April, 2007 making plastic pallets on a machine, job that lasted him 1 year and that ended due to injury on his back for which he has a Workers Compensation claim pending. Claimant performed temporary work for 3 ½ months in 2006 packaging, and has otherwise performed factory work and worked in grocery stores unloading trucks and stocking shelves.

(9) Claimant has applied for SSI and been denied, and has appealed this denial. Claimant currently lives with his mother and receives food stamps. Claimant's driver's license has been suspended due to not having any insurance.

(10) Claimant alleges as disabling impairments: back pain from a herniated disc and bulging disc for which he had spinal fusion done, degenerative disc disease, and depression for which he is on Cymbalta but has never been in therapy for.

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 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 includes a [REDACTED] [REDACTED] evaluation performed for Disability Determination Service. Claimant's chief complaint is "herniated discs and spinal fusion", and he reported a history of low back pain that is there every day, radiates down both legs and causes some numbness as well. Claimant had surgery in 2007 for an L5 S1 fusion; he can walk for about 30 yards, stand for about 5 minutes and sit for about 10-15 minutes. Claimant lives in a house with his mother, is independent in all activities of daily living, does a little bit of light housework and sometimes uses a riding mower. Claimant's medications include Relafen, Neurotin, Vicodin, Elavil and Prinivil.

Claimant was cooperative in answering questions and following commands, his immediate, recent and remote memory is intact with normal concentration, his insight and judgment are both appropriate, and he provided good effort during the examination.

Claimant's peripheral pulses are intact. Musculoskeletal examination revealed no evidence of joint laxity or effusion. There was a lot of pain with range of motion of his knees, and there was crepitation in his knees. Claimant's grip strength remains intact, dexterity is unimpaired, and he could button clothing and open a door. Claimant had mild difficulty getting on and off the examination table, mild difficulty heel and toe walking and was able to squat 60% of the way down to touch the floor. Claimant had significantly diminished range of motion in his lumbar spine, and there was diminished sensation to light touch in the L3 distribution in his left leg.

[REDACTED] of [REDACTED], states that the claimant reports the onset of left leg pain in approximately January, 2007 while employed with Vantage Plastics. Claimant reports being put on a job that required pulling plastic parts off machines that weighed 60-70 pounds, and he would have to handle the parts, moving them around to trim them once

they came off the press. While doing this job he developed left leg pain. An MRI of the lumbar spine of [REDACTED] reveals broad-base occentric left herniation L5-S1 compressing the S1 root. There is also a broad-base disc bulge or herniation at T11-12 with impression on the thecal sac, although severe canal stenosis at T11-12 is not noted. An MRI of claimant's thoracic spine was completed on [REDACTED], again revealing broad-base central herniation at T11-12 with moderate stenosis. Claimant then participated in physical therapy with some decrease in left leg pain in April, 2007. Claimant eventually underwent surgery on [REDACTED], after having two epidural injections in June and July of 2007 and failure of conservative treatment. Surgery included L5-S1 decompression fusion with posterior instrumentation. Operative note suggest the presence of a moderate to large disc herniation at L5-S1 causing fairly severe compression of the S1 root and to a lesser extent L5. Claimant did get some improvement in left leg pain following the surgery, but continued to have pain and numbness, particularly on the left. Claimant reports increased pain in his back and leg with coughing and sneezing, with bending, lifting, twisting or static posture, and that he must lay down 3-4 times per day to achieve symptomatic relief. X-rays of March 5, 2008, reveal fusion at L5-S1 with mild narrowing at the L4-5 disc space.

Evaluation states that the claimant's lumbar disc herniation is a condition significantly aggravated by work activities, including heavy lifting on the job in January of 2007. Claimant is a candidate for a post-operative rehabilitation program to increase truncal strength and range of motion. Claimant has activity restrictions including 10 pounds frequent lift, 20 pounds maximum lift, no repetitive bending, stooping or twisting of the trunk and sit/stand option, and his restrictions are permanent.

It is noted that the claimant also states he suffers from depression, but he has not been in any therapy for this alleged condition, and no medical records have been provided to indicate some type of mental impairment. Therefore, only claimant's physical impairments can be considered in this decision.

Medical evidence has clearly established that claimant has an impairment (or combination of impairments) that has more than a minimal effect on claimant's work activities. See Social Security Rulings 85-28, 88-13, and 82-63. For these reasons, this Administrative Law Judge finds that claimant has met his burden of proof at Step 2.

The analysis proceeds 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, the Administrative Law Judge concludes that the claimant does not have the ability to perform past relevant work. Claimant's past relevant work was doing general labor jobs that included heavy lifting. Finding that the claimant is unable to perform work which he has engaged in in the past can 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 has submitted sufficient objective medical evidence that he lacks the residual functional capacity to perform tasks from his prior employment. However, medical evidence does establish that he is capable of frequently lifting 10 pounds with 20 pound maximum lift with sit/stand option. 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 18-44 (claimant is 35), that is even illiterate or unable to communicate in English (claimant completed GED and can read, write and do basic math), that has only unskilled work history or no work history at all that can perform only sedentary work is not disabled per Vocational Rule 201.23.

In conclusion, the claimant has 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). However, even with these impairments, 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: September 16, 2009

Date Mailed: September 17, 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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