

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: 2009-23661
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 14, 2009
Bay 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 July 14, 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 February 11, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On April 6, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On April 8, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On April 15, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On June 9, 2009, the State Hearing Review Team (SHRT) also denied claimant's application stating the claimant was capable of performing other work, namely light unskilled work per 20 CFR 416.967(b), 20 CFR 416.968(a), and Vocational Rule 202.20.

(6) Claimant submitted additional medical information following the hearing that was forwarded to SHRT for additional review. On August 27, 2000 SHRT once again determined that the claimant was not disabled, as he retains the capacity to perform simple unskilled, light work.

(7) Claimant is a 42 year old man whose birth date is [REDACTED]. Claimant is 5'9" tall and weighs 260 pounds, after losing weight down to 195 lbs. and then gaining up to 280 lbs. due to "nerves" in the last 2 years. Claimant has a GED but indicated he reads and writes on a 3rd grade level and can do some basic math.

(8) Claimant states that he last worked in 2008 for 4 months performing maintenance duties, job he was not able to continue to do physically as he could not carry heavy things. Claimant was incarcerated for 21 years and released in 2007, and while in prison performed various work duties including maintenance, plumbing, yard, kitchen and laundry.

(9) Claimant alleges as disabling impairments: degenerative disc disease, pancreatitis, acid reflux disease, anger issues, depression, and previous suicide attempt.

(10) Claimant has applied for SSI and been denied and is waiting on a hearing with SSA on the denial.

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 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 or a combination of impairments that is “severe”. An impairment or combination of impairments is “severe” within the meaning of the regulations if it significantly limits an individual’s ability to perform basic work activities. An impairment or combination of impairments is “not severe” when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual’s ability to work (20 CFR 404.1521 and 416.921; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. [REDACTED]). As a result, the department may only screen out claims at this level which are “totally groundless” solely from a medical standpoint. The [REDACTED] court used the severity requirement as a “*de minimus* hurdle” in the disability determination. The *de minimus* standard is a provision of a law that allows the court to disregard trifling matters.

The objective medical evidence on the record includes a [REDACTED] [REDACTED] for claimant’s complaint of low back pain. MRI of claimant’s lumbar spine shows mild degenerative disc changes at L5-S1 and L4-5, a disc herniation at L4-5 resulting in mild compression of the right anterolateral thecal sac and possible compression of the right nerve root of L5, and also compromise of the right neural foramen L4-5 with possible compression of the right exiting nerve root of L4.

A June 17, 2008 ultrasound Doppler of claimant's leg arteries due to complaint of numbness in both legs indicates significant disease involving arteries demonstrated bilateral.

Neurosurgeon's report for June 26, 2008 exam states that the claimant's chief complaint is right sciatica. Claimant's past medical history is basically unremarkable. Claimant's blood pressure was 144/82 and pulse rate 74. General appearance was well maintained, mood and affect were normal, and he was oriented x3. Claimant's attention span was normal, he did not have any language dysfunction, his gait was antalgic, and right straight leg raise was restricted. Motor examination did not reveal any focal motor deficits. Reflexes showed absent right ankle jerk. The rest of the reflexes were symmetrical. Sensory examination revealed abnormally low sensitivity to pain. The rest of the sensory examination was unremarkable, and tone and coordination were maintained. Examiner indicated he had reviewed the MRI dated June 14, 2008 and agrees that there is evidence of right -sided herniated disc at L4-5. Examiner concludes that the claimant presents mainly with symptoms of right S1 radiculopathy with absent ankle jerk and pain going to the posterior aspect of the calf. However, the disc is at right L4-5, which is rather confusing. Arrangement for pain clinic will be made upon claimant's request.

An August 1, 2008 medical consultation report quotes the claimant as saying while he was in prison in 2003 a cart that weighed 750 lbs. fell on his shoulders. After that he has been having severe pain in the lower back off and on, and has been getting progressively worse for the last year. Claimant was 5'9" tall and weighed 280 lbs, his motor strength was 5/5 on the left side and 3/5 on the right side with a lot of give away weakness. Claimant had difficulty lifting the right lower extremity, there was decreased sensation to touch and pinprick on the later aspect of the right lower extremity, and he walked with a limp favoring his right lower extremity. Claimant could not attempt to even stand up straight, could not walk on his heels and toes, and

lumbar spine flexion and extension movements exacerbated his pain. Claimant's diagnosis was chronic back pain with lumbar radiculopathy secondary to herniated disc. Plan of management was epidural injections.

On July 20, 2007 claimant was admitted to the hospital through the emergency department with abdominal pain and bleeding. Claimant was discharged on July 31, 2007 after being diagnosed with pancreatitis, colitis with rectal bleeding, internal hemorrhoids with rectal bleeding, reflux disease, degenerative disc disease, Barrett's esophagus, and tobacco abuse. It was noted that during the hospital stay claimant's pancreatitis was resolving and his diet increased, but he then ate fried chicken fingers and a cheeseburger and had a relapse of symptoms. Claimant's discharge instructions included a low fat diet with 6 small feedings per day, no alcohol use, and smoking cessation.

New medical information provided following the hearing includes a CT of claimant's neck of March 27, 2009 due to complaint of pain. Impression was that of sinusitis causing jaw and head pain.

Claimant was seen by [REDACTED] for a therapy assessment on July 16, 2009. Claimant contacted this organization due to suicidal ideations and intent. Claimant stated he had recently bought a gun and stated he would either kill himself or someone else, but his mother made him get rid of the gun. Claimant was living with his mother and brother. Claimant stated he was currently unemployed and that he had worked as a maintenance man for 4 months but was fired for temper. Claimant also stated that he had been in prison for 21 years and out since 2007, and that he worked the entire time while in prison. Claimant reported drinking occasionally with last use being July 15, 2009, and smoking 10 cigarettes per day. Claimant was noted to have aggression issues, but denied suicide/homicidal

ideation at the time. Diagnostic summary described the claimant as appropriately dressed, neat and clean, and appearing in touch with reality. Claimant was cooperative, alert and oriented to person, place and time. Claimant reported mood swings, depression, panic attacks and severe issues with anger and rage due to childhood abuse and lengthy stay in prison. Claimant was diagnosed with major depression, PTSD, anxiety disorder, and personality disorder.

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, and that such impairment(s) have lasted 12 months or more. Analysis therefore continues to Step 3.

At Step 3 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's past work history consists of doing variety of prison jobs including maintenance, plumbing, yard work, kitchen work, laundry work, etc. As the claimant had been in prison for 21 years, he has no other reported work experience except 4 months as a maintenance person in 2008. Claimant testified that he lost this job as he was not able to physically do it. Claimant however reported during the July, 2009 psychological assessment that he was fired from this job due to his temper. Finding that the claimant is unable to perform work which he has engaged in in the past, simple labor jobs that he performed in prison for 21 years, cannot 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 [REDACTED]
[REDACTED]... 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 sedentary and light work if demanded of him. Claimant's pancreatitis and acid reflux disease can apparently be controlled through proper diet, according to the medical records provided. Claimant does have degenerative disc disease but no motor deficits according to the medical information provided. Claimant's hearing testimony is that he is on pain medication and mainly spends his days lying on the couch. Claimant also testified that he can sit for an hour, stand for an hour before his leg gives out, and walk for about 1 block but it is painful to do so. 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, even giving claimant's hearing testimony great weight. 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 simple sedentary and light work. Even if the claimant could only perform sedentary work, under the Medical-Vocational guidelines a younger individual age 18-44 (claimant is age 41), who is even illiterate or unable to communicate in English and has unskilled or no work history, who can perform 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.

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 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: April 19, 2010

Date Mailed: April 19, 2010

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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