

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: 2009-24535
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 22, 2009
Emmet 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 22, 2009. Claimant personally appeared and testified. Also appearing and testifying on claimant's behalf was his girlfriend [REDACTED]

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 November 17, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On March 20, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On March 26, 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 11, 2009, the State Hearing Review Team also denied claimant's application citing insufficient evidence, and suggesting additional medical information, a mental status examination, be obtained.

(6) Claimant agreed to undergo the mental status examination at the hearing. Department scheduled such examination on [REDACTED], with a [REDACTED]. Claimant did not keep this appointment saying he never received a notice of it. Department re-scheduled the appointment for [REDACTED], but according to [REDACTED] office claimant did not keep this appointment either.

(7) Claimant is a 39 year-old man whose birth date is [REDACTED]. Claimant is 6' 2" tall and weighs 266 pounds. Claimant attended the 11th grade and has a GED. Claimant can read, write and do basic math. Claimant was in special education classes while in junior high and while in foster care, for acting out and not understanding the work.

(8) Claimant states that he last worked in December, 2008 cutting meat at a market part time, job he quit do to back pain and doctor's statement that he could not work. Claimant had not worked in the last 10 years otherwise, as he had been in prison from 1997 to November, 2007. While in prison claimant performed a variety of jobs including yard work, kitchen and green house work, job he could stand and sit on.

(9) Claimant currently lives with his girlfriend who is on Social Security disability and receives food stamps. Claimant has a driver's license and drives twice per week about 14 miles to visit family.

(10) Claimant alleges as disabling impairments: back pain, glaucoma, depression, bipolar disorder, ADHD, asthma, acid reflux and diabetes type II.

(11) Claimant has applied for Social Security disability and been denied, and has an upcoming hearing on his appeal.

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 objective medical evidence on the record includes a note from a D.O. dated [REDACTED] [REDACTED] saying that the claimant has been seen by a neurosurgeon and diagnosed with a herniated lumbar disc and foraminal stenosis, surgery was suggested but cannot be done due to lack of insurance, and he is having increased radicular pain and is unable to work at this time.

MRI of [REDACTED], indicates that the claimant has large focal left paracentral to lateral soft tissue disc herniation at L5-S1 with a sizable mass effect, lateral soft tissue disc herniation on the left at L3-4 resulting in some neural foraminal compromise, and mild left neuroforaminal compromise at L4-5. Medical Examination Report of [REDACTED] from the claimant's treating source cites the MRI as basis for concluding that the claimant can never lift any weight if he does not have surgery on his back.

[REDACTED], medical evaluation completed upon request by DHS indicates as claimant's chief complaint three herniated discs. Claimant reported falling on ice 10 years ago and developing progressive degeneration. Claimant was on Vicodin and never had any surgical intervention. Claimant stated he does do pelvic thrust therapy and heat therapy which seems to help. Claimant has had no physical therapy, does not use an assistive device, and states the pain does radiate into the left leg and is aggravated by coughing and sneezing.

Claimant was cooperative in answering questions and following commands. His immediate, recent and remote memory is intact with normal concentration. Claimant's insight and judgment are both appropriate, and he provided good effort during the examination. Claimant's examination areas are normal, he has no clubbing, cyanosis, or edema and his peripheral pulses are intact. Musculoskeletal exam shows no evidence of joint laxity, crepitance,

or effusion. Grip strength remains intact. Dexterity is unimpaired. Claimant had mild difficulty getting on and off the examination table, moderate difficulty heel and toe walking and performing a partial squat, and was unable to hop. Straight leg raising is negative on the right and had pain at 40 degrees supine on the left. Claimant had tenderness at the L4-L5 area and over the sacroiliac joint.

Claimant's cranial nerves are intact. Motor strength is diminished at 4/5 in the left lower extremity, but muscle tone is normal. Sensory is intact to light touch and pinprick, Romberg testing is negative, and claimant walks with a mild left limp without the use of an assist device.

Conclusion is that of back pain and the claimant did have findings of some radicular symptoms into the left leg with associated reflexive changes and weakness. He did have difficulty performing orthopedic maneuvers, but whether this is due to a disc herniation cannot be said as there are no imaging studies.

Clinical Psychological Evaluation of [REDACTED] to assess generalized psychological functioning was performed to assist with claimant's disability claim. It is noted that the claimant was released from prison in November of last year, that the local community mental health office diagnosed him with "mild depression", but that he feels this is "inaccurate diagnosis" and would like a second opinion.

Claimant reported a difficult childhood and a very limited work history as he held several jobs between 1994 and 1997 but bored easily and tended to quit the jobs when he would lose interest. Claimant indicated that he has had psychological problems during much of his adult life and has also had difficulties with substance abuse in the past. Claimant stated he has been released from prison in 2007, was on parole and living in an adult foster care (AFC) home. Claimant further stated that he does not feel that he is capable of working, as he feels "a lot of anxiety and that he is unable to control anger impulses sometimes". Claimant stated that he

spends his time helping around the AFC home, watching moves and eating, and that he has a girl friend that also lives in the home.

Claimant arrived on schedule for his appointment, being transported by his case worker. Claimant's vision and hearing seemed satisfactory as did his balance, gait, coordination and fine and gross physical movements. He was alert and oriented to person, time and place. Communication functions appeared to be in the normal range as speech was clear, coherent, logical and goal directed. Claimant's affect appeared to be somewhat flat during the interview. Recent and remote memory was generally intact, stream and content of thought were also appropriate and congruent to interview and test questions. Overall mentation and cognitive appeared to be within normal limits. Claimant was relaxed and comfortable during the evaluation with no significant behavior abnormalities noted. Exam summary concludes that currently the claimant is experiencing a great deal of emotional turmoil as he is having problems contending with the demands of living outside of prison. Claimant is not fully capable of managing his own affairs or working in any competitive employment setting. Affective disturbances are the most prominent psychological issues that he is experiencing; however, he harbors many self-defeating and destructive personality disorder traits.

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 he has had such impairments for 12 months. See Social Security Rulings 85-28, 88-13, and 82-63.

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 claimant's work history is minimal and in addition he spent 10 years in prison. Claimant reported performing labor jobs in prison but what type of physical/mental exertion these jobs entailed cannot be established for certain. The Administrative Law Judge cannot make a conclusion that the claimant has the ability to perform past relevant work, due to claimant's very sporadic work history.

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 to show that he is physically unable to do any type of work if demanded of him, or at least sedentary work. Claimant performed various prison work duties up to 2007 and has provided no medical documentation from Michigan Department of Corrections to show he has been treated for physical or mental problems and/or excused from work details by Health Care. Medical evaluation does not establish that the claimant is totally unable to perform simple jobs. Claimant failed to attend two appointments made for him for a mental status examination that could reveal his current mental state and possibly assist in making a favorable disability determination. 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 at least sedentary and possibly light work. Under the Medical-Vocational guidelines, a younger individual age 18-44 (claimant is age 39), who is even illiterate or unable to communicate in English and has only unskilled or no work history and that can perform only sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.23. Claimant has a GED and speaks English.

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 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: February 10, 2010

Date Mailed: February 25, 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.

IR 

cc:

