

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: 2009-24908
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 23, 2009
St. Clair 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 23, 2009. Claimant personally appeared and testified. Also appearing and testifying on claimant's behalf was his mother and legal guardian [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 October 15, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On December 30, 2008, the Medical Review Team denied claimant's application stating that claimant could perform past relevant work.

(3) On January 5, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On January 12, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On June 17, 2009, the State Hearing Review Team (SHRT) again denied claimant's application stating that the claimant retains the capacity to perform a wide range of unskilled light work.

(6) Following the hearing claimant submitted additional medical information that was forwarded to SHRT for additional review. On August 4, 2009, SHRT once again concluded that the claimant retains the capacity to perform his past relevant work, which was simple, unskilled work, and again denied his application.

(6) Claimant is a 50 year-old man whose birth date is [REDACTED]. Claimant is 5'6" tall and weighs 148 pounds. Claimant attended the 12th grade but does not have a diploma or a GED. Claimant is not able to read or write, and can only add a little. .

(7) Claimant last worked in 2001 in foundry work as a polisher and buffer, job he held for 15 years and from which he was fired for drinking beer in the parking lot during lunch. Claimant also worked in a machine shop for 1 week but was let go.

(8) Claimant currently lives in subsidized housing with his parents paying his rent in return for him cutting their grass once per week. Claimant also receives food stamps.

(9) Claimant's mother has been appointed his guardian through the [REDACTED] [REDACTED] due to him being a "legally incapacitated individual".

(10) Claimant alleges as disabling impairments anxiety, bad teeth and bad back, but states he has no problems sitting, standing or walking, and does not take any medications for his 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).

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 2001. 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] Psychological Mental Status Report with a diagnosis of depressive disorder, alcohol dependence in early sustained remission, and GAF of 50 (moderate difficulty in social and occupational functioning).

Michigan Medical Consultants physical examination of [REDACTED], concludes that the claimant has back pain, likely degenerative joint disease, that does not cause him any significant physical issues and that he only takes an occasional aspirin for pain due to this condition. Claimant reported being able to walk couple of miles and stand for one-half hour. Claimant also reported drinking six beers per week.

Lumbar spine x-ray of [REDACTED] indicates a minimal end plate spurring at L2-L3 anteriorly, but no abnormalities affecting the posterior elements or sacroiliac joints.

Additional information submitted following the hearing includes the Verification of MRS Status form indicating claimant was an MRS client from November, 2008 to June 15, 2009. Psychological/Vocational Report of [REDACTED], indicates that claimant has a Full Scale IQ of 66 placing his intellectual functioning in the mild retarded range. Claimant scored “far below average” in the entire verbal and performance tests relative to others his age. This indicates an extremely poor general fund of information, short term memory, working vocabulary, rote arithmetic skill, common sense judgment and capacity for verbal abstraction. This was also true of claimant’s awareness of essential details, understanding of a logical sequence of events, visual-spatial skill, ability to quickly reproduce written symbols and analytical reasoning. Claimant’s overall level of functioning indicates that he may have problems with many full time competitive employment positions and a work evaluation program

would be helpful in his case. Claimant should be capable of training for a limited number of unskilled occupations and he will require a job coach for any new position.

[REDACTED] Situational Assessment Report of [REDACTED], indicates that the claimant was referred for a four-week Situational Assessment Evaluation by DLEG to assess physical and psychomotor capacities i.e. ability to work a full day, any physical complaints; emotional stability i.e. ability to deal with conflict, to adopt to change; to deal with stress, response to co-workers, and to supervision; aptitudes i.e. aptitude demonstrated for production; work skills and tolerances; work habits i.e. punctuality, attendance, concentration, organization, and interpersonal skills; work-related capabilities i.e. communication and hygiene; assessment of the most effective method of instruction; possible employment objectives; potential to benefit from further services. Claimant's job station during the four week assessment was production/assembly piece-rate.

Claimant presented himself as a cooperative and polite individual, appeared motivated to work, and was able to work in different assembly jobs because of his ability to follow and retain simple verbal and visual directions as well as demonstration. Even though the claimant was able to grasp the directions for the task he was placed on, his productivity was not competitive for community employment. Claimant was a conscientious worker and was present every day during his four-week assessment, and was punctual for the time allowed due to transportation issues. Summary indicates that the claimant was present every day during the four-week assessment, and his hygiene and grooming were good. Claimant average weekly production rate was 34.25% and this is not competitive for community employment in the area of manufacturing assembly.

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. Claimant's IQ tests and Situational Assessment Evaluation clearly establish this. See Social Security Rulings 85-28, 88-13, and 82-63. Claimant has therefore met his evidentiary burden and analysis 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 support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment, that of Mental Retardation, Section 12.05. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, claimant can be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d). No further analysis is needed.

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). The clinical documentation submitted by the claimant is sufficient to establish a finding that the claimant is disabled. There is 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 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 meet the definition of disabled under the MA-P program and because the evidence of record does establish that claimant is unable to work for a period exceeding 90 days, the claimant does meet the disability criteria for State Disability Assistance benefits also.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly denied claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits.

Accordingly, the department's decision is REVERSED. Department shall:

1. Process claimant's disputed October 15, 2008 MA, retro MA and SDA application.
2. Issue the claimant any MA and SDA benefits he is eligible for (i.e. meets financial and non-financial eligibility requirements), based on October 15, 2008, application date.
3. Notify the claimant in writing of this determination.
4. Review claimant's continuing MA and SDA eligibility in September, 2010.

SO ORDERED.

/s/ _____
Ivona Rairigh
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: September 02, 2009

Date Mailed: September 9, 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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