

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: 2009-25225
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 friend [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 March 17, 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's impairment was non-exertional.

(3) On April 13, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On April 23, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On June 16, 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 simple, unskilled work, and also cited P.L. 104-121 due to the materiality of drug and alcohol abuse.

(6) Claimant presented additional medical evidence following the hearing that was forwarded to SHRT for review. On August 12, 2009, SHRT once again denied the claimant stating he was capable of performing other work, namely light unskilled work.

(7) Claimant is a 37 year-old man who is 6'2" tall and weighs 215 pounds after losing 20 lbs. due to stress and not eating. Claimant completed high school and 1 ½ years of college in nursing classes, training he did not finish. Claimant can read, write and do basic math.

(8) Claimant is not currently employed and last worked in June, 2008 in a factory for 4 days as a bailer collecting cardboard, job that ended when he was arrested and sent back to prison. Claimant also worked for 3 months in 2008 at a golf course. Claimant has been in and out of prison, in 2002, 2004, 2005, 2006, and 2008 to 2009.

(9) Claimant alleges as disabling impairments: severe depression, neck and shoulder problems/pain, anxiety, insomnia, and long term substance abuse.

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 June, 2008, when he was arrested and sent back to prison. 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 radiology report of

██████████ performed due to claimant's complaints of neck pain. Impression is that of

mild degenerative disc disease at C5-C6 with corresponding neural foramina stenosis on the right of moderate severity, and no acute compression fracture deformity. Impressions of claimant's shoulder revealed no acute fracture or dislocation, and mild degenerative osteoarthritis at the acromioclavicular joint.

Physical examination of [REDACTED], indicates that the claimant was 235 pounds, and that his blood pressure was 122/77. Claimant had strength of 5/5 bilaterally, there were no obvious gross sensory or motor deficits, he had normal range of motion of the cervical spine and shoulder, and there were no signs of atrophy of impingement.

Michigan Department of Corrections (MDOC) Comprehensive Psychiatric Examination of [REDACTED], indicates claimant was brought to [REDACTED] on [REDACTED] with parole violation and a new case. This is claimant's third state incarceration, and he was arrested for resisting arrest while on parole. Claimant has seven felony and 11 misdemeanor convictions, and this time was arrested on [REDACTED] and resided in the [REDACTED] until brought to MDOC facility. Claimant acknowledged that he is a chronic alcoholic and he also has a mood disorder which was previously treated both in prison and as an outpatient briefly. Claimant reported having a drinking problem for at least ten years, he binge drinks, over the last three months prior to incarceration, he was drinking a minimum of 12 beers per day, and was also using marijuana every day, 3-4 joints per day.

Claimant denied any specific thoughts about death or suicide or psychotic symptomatology. Claimant was treated while in MDOC during 2005-2006 for mood disorder diagnosis and given medications he did very well with. Upon being discharged from the prison claimant was rejected by Community Mental Health indicating that he was not serious enough to be treated by them. Claimant was then denied services by a free clinic as they felt he was too

seriously ill. Claimant has been off his medications for a year. It was noted that the claimant does not have any active medical problems. Claimant related being in the Army for 2 years at the age of 19, re-joining the army but began drinking and was court-martialed in less than one year.

Claimant's mental status examination indicates he was pleasant and cooperative, his speech was logical, coherent and relevant; he denied hallucinations, delusions and ideas of reference or influence. He was fully oriented to person, place, time and circumstances, and there was no belligerence, hostility or anger noted. Claimant's motor activity was normal, he did not appear to have any compulsive behaviors or unusual tics or other movements. Claimant did not appear to be particularly sad, but was remorseful and guilty about some of his behaviors and upset about not seeing his children and his girlfriend in several months. Claimant's judgment was definitely impaired by his alcohol intake and marijuana use. Diagnoses were that of mood disorder, alcohol dependence, personality disorder, and problems related to interaction with legal system/crime. Claimant's GAF was 60. Claimant was to start on medications for the mood disorder.

MDOC physical exam of [REDACTED], indicates that the claimant presented with left shoulder pain and stated that about 2 ½ months ago, he developed pain in the left shoulder after falling against a bunk. Claimant's gait was steady, there was tenderness over the lateral aspect of the shoulder but he had nearly full range of motion in all directions. Muscle strength was 5/5 and equal, grip was 5/5 and equal. Shoulder x-ray showed old healed left clavicle fracture.

Claimant has been seen for mental health outpatient treatment at Veterans Affairs Medical Center since his release from prison in February, 2009. Claimant reported being sober

since July, 2008, and compliance with his medication. Claimant has also been receiving injections for alcohol anticraving medication.

Progress Notes for [REDACTED], indicate that the claimant was currently staying at Impact House (3/4 house) and was unemployed with no source of income. Claimant reported his mood as depressed, feeling very irritable and overwhelmed with his problems.

Progress Notes for [REDACTED], state that the claimant was seen for treatment of alcohol dependence which is in full sustained remission, and for severe major depressive disorder. Claimant was feeling bad on this day and discouraged that things are not getting better for him, as he was having problems with parenting time and custody of his children and has been crying a lot lately.

Progress Notes for [REDACTED], quote the claimant as being calm, alerted and orientated x 3. Claimant stated he has had no alcohol in the last month. No new medications were ordered, and no pain medications. Claimant stated he was sleeping and eating "OK", his hygiene was good, and he talked about how important it is for him not to drink because of his two sons. Claimant reported a lot of pain due to rainy weather. He continues to live at Impact House, attends meetings and has a mentor. Claimant is more active in the community, and is excited to give input into county planning.

Claimant testified that he is in daily pain in his shoulder and neck that he can only sit and stand for about 20 minutes at the time, but that he rides a bike daily. Claimant's friend testified that the claimant has not been the same as he was years ago and that he complains of pain.

This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

The evidentiary record is insufficient to find claimant suffers a severely restrictive mental impairment. The record does show that the claimant suffers from depression and anxiety, but it is also clear from the information provided that the claimant has had a severe alcohol problem for a number of years and also smoked marijuana on a daily basis. Claimant was discharged from the military due to drinking when he was in his early twenties, and was drinking from the time he entered his teen years. Claimant testified that he cannot maintain employment; however his sporadic employment history had to be affected by his alcohol abuse, and not only by his mental issues. Claimant has now been sober and drug free since last year and is receiving mental health treatment and medications for his depression and anxiety. If claimant continues to abstain from alcohol and drugs, it appears very likely that he will not suffer past mental issues caused by his substance abuse. For these reasons, this Administrative Law Judge finds that claimant has failed to meet his burden of proof at Step 2. Claimant must be denied benefits at this step based upon his failure to meet the evidentiary burden.

If claimant had not been denied at Step 2, the analysis would proceed 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, if claimant had not already been denied at Step 2, the Administrative Law Judge would have to deny him again based upon his ability to perform past relevant work. Claimant's past relevant work, according to MDOC records, was factory work through

temporary companies, landscaping, golf course attendant, and an apprentice pipe-fitter for a while. Claimant was working briefly in a factory in June, 2008 and that job did not end because of his medical inability to do it, but because he drank and was in an altercation with the police that landed him back in jail and subsequently prison. Claimant therefore should be able to perform labor jobs as he has done in the past, as his medical records do not reveal any significant physical problems that would prevent him from doing so, despite his claims of daily pain. Finding that the claimant is unable to perform work which he has engaged in in the past cannot therefore 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 *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 that he lacks the residual functional capacity to perform tasks from his prior employment, or that he is physically unable to do at least light work if demanded of him. 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, or possibly even medium work. Under the Medical-Vocational guidelines, a younger individual (claimant is age 37), who is illiterate or unable to communicate in English (claimant has college education) and an unskilled or no work history

who can perform even only sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.23. Claimant's education, work history and ability to perform work exceed these standards.

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 at least 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: August 19, 2009

Date Mailed: August 20, 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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