

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: 2009-26266
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 5, 2009
Otsego 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 August 5, 2009. Claimant personally appeared and testified. Claimant was represented by [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 January 28, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On March 16, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On March 17, 2009, the department caseworker sent claimant notice that his application was denied.

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

(5) On June 25, 2009, the State Hearing Review Team (SHRT) also denied claimant's application stating he could perform other work, namely unskilled, sedentary work per Vocational Rule 201.27.

(6) Claimant provided additional medical information following the hearing that was forwarded to SHRT for review. On November 6, 2009, SHRT once again determined that the claimant was not disabled as he was capable of unskilled sedentary work per Vocational Rule 201.28.

(7) Claimant is a 35 year-old man whose birth date is [REDACTED]. Claimant is 5'9" tall and weighs 215 pounds. Claimant completed 12th grade and some college classes in police sciences. Claimant can read, write and do basic math.

(8) Claimant states that he last worked in August, 2007 at a factory inspecting electrical boards, job he had for 5 years and that ended due to the company closing shop and moving to China. Claimant collected UCB until 2008. Claimant also worked in film industry on rental company equipment from 1998 to 2002 in California, job that ended when he moved to Michigan to avoid smog, urban decay and earthquakes.

(9) Claimant currently resides with friends at various addresses, gets some financial help from them and his sister, and receives food stamps. Claimant does not have a driver's license but only a learner's permit as he is too nervous to drive.

(10) Claimant alleges as disabling impairments: diabetes, high blood pressure, neuropathy, vision problems, tumor on his chest, depression and anxiety.

(11) Claimant has applied for SSI and been denied, and is appealing this decision.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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 August, 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 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 [REDACTED]. [REDACTED]. Claimant’s chief complaints were diabetes, hypertension, neuropathy, migraines, left foot injury, frequent urination and eye problems. Claimant reported a seven year history of diabetes with chronic neuropathy, dysesthesia in his feet, and retinopathy. Claimant described being able to walk about 20 steps before his neuropathy causes cramping, denied any problems sitting, and stated he can stand about ½ hour and lift about 10 pounds.

Physical examination indicates that the claimant’s blood pressure was 184/98, and visual acuity in right eye 20/50 and left eye 20/50, with corrective lenses. Claimant’s peripheral pulses are intact, and there is no evidence of joint laxity, crepitation or effusion. Grip strength remains intact, dexterity is unimpaired, claimant had no difficulty getting on and off the examination table, mild difficulty heel and toe walking and squatting, and moderate difficulty hopping. Claimant had slow shuffling gait but there was no clinical evidence to support the need for walking aid. Motor strength and tone are normal. Exam conclusion is that of diabetes as the claimant does have findings of multiple conditions, most notably retinopathy with diminished vision as well as neuropathy. Claimant appears to have microvascular disease in his lower extremities as well contributing to his pain. His sugars are poorly controlled, mostly around 400,

and he has been hospitalized within the last two years for ketoacidosis. At this point claimant's current prognosis is poor due to the nature of his disease process and lack of control.

February 16, 2009, Medical Examination Report indicates as claimant's current diagnosis poorly controlled diabetes with neuropathy, post traumatic stress/depression and insomnia, and hypertension. Claimant has abnormal ambulation and is cautious secondary to neuropathy/pain. Claimant's vision is decreasing most likely secondary to retinopathy. Claimant also has weakness in his extremities and decreased sensation.

[REDACTED], letter from [REDACTED] states that the claimant was examined on this date and has severely uncontrolled type 2 diabetes, with symptoms of both acute hyperglycemia as well as chronic complications from diabetes. Claimant also has severe diabetic neuropathy, with lack of sensation over the soles and dorsum of his feet extending toward the mid-calf. His blood sugars are severely uncontrolled, and insulin therapy was initiated at the clinic visit today. Claimant is unable to work due to the symptoms of acute hyperglycemia. Once his blood sugars are under optimal control, the ability to perform work should be re-evaluated, as vision and peripheral sensation may improve significantly once the blood sugars have normalized.

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. The impairment has lasted 12 months, and analysis continues to Step 3, as the claimant has met his burden of proof at Step 2.

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 9.00. 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 Bridges 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. BEM, Item 261, page 1. Because the claimant meets 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 meets 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 MA, retroactive MA and SDA application.

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

1. Process claimant's disputed January 28, 2009 MA and SDA application.
2. Request in writing any additional information/verifications from the claimant that are needed to determine his MA and SDA eligibility, in accordance with departmental policy governing such requests.
3. If the claimant meets all of the financial and non-financial eligibility requirements, grant him MA, retro MA and SDA benefits based on January 28, 2009 application date.
4. Inform the claimant in writing of department's determination.
5. Review claimant's ongoing MA and SDA eligibility in April, 2011, at which time updated medical records are to be obtained. Claimant is advised that he needs to be compliant with all medical treatment prescribed for him by medical providers.

SO ORDERED.

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

Date Signed: March 24, 2010

Date Mailed: April 6, 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.

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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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