

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: 2009-27904
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 26, 2009
Kent 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 26, 2009. Claimant personally appeared and testified. Claimant was represented by [REDACTED], Attorney at Law [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 5, 2009, claimant filed an application for Medical Assistance alleging disability. In addition, claimant had apparently been approved for State Disability Assistance

sometimes in the past 2 years for an unknown reason, as the department did not provide documentation for this approval. Claimant's SDA benefits were due to review.

(2) On April 29, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work. Denial was for both MA and SDA.

(3) On April 29, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On May 8, 2009, claimant filed a request for a hearing to contest the department's negative action.

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

(6) Claimant submitted additional medical evidence following the hearing. This evidence was forwarded to SHRT for additional review. On October 6, 2009, SHRT once again denied the claimant stating he was capable of performing other work, as additional objective information received does not significantly affect the residual functional capacity.

(7) Claimant is a 48 year-old man who is 5'11" tall and weighs 170 lbs. after losing 30 lbs. over the last year due to abdominal pain caused by diverticulitis. Claimant has a GED and automotive mechanic training, and can read, write and do basic math.

(8) Claimant states that he last worked in 2004 at instant oil change facility changing oil for 1 year, job that ended due to back pain and chemical burns on his arm, but not because claimant had to quit but because he was fired. Claimant has also worked as a cashier at gas stations, in manufacturing as a hi-lo driver, for temporary services mainly in light labor jobs, and in fast food restaurants.

(9) Claimant states that he stayed with friends from 2004 to 2007 and did odd jobs as a mechanic, but then started receiving SDA in 2007 and has survived on these benefits and on food stamps. Claimant currently lives in a house with a friend.

(10) Claimant alleges as disabling impairments: back pain, diverticulitis, and bone spur on left shoulder that causes him pain.

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 2004 except for odd jobs until he received SDA in 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).

It is noted that the claimant was denied Social Security disability in September, 2007 as SSA determined that his condition is not severe enough to keep him from working, and that decision is contained in the case record. Claimant states that he is appealing the denial and waiting for an SSA hearing.

Michigan Medical Consultants exam report of [REDACTED], performed for Disability Determination Service lists as claimant’s chief complaints ruptured disc in lower back and numbness in legs. Claimant stated that he injured his back 13 years ago and had surgery in 1996 in the lumbar area, but was not exactly sure what type of surgery he had. Claimant re-injured his back about 2 years later lifting, and an MRI at that time said that he had some particle floating. Claimant had not had any physical therapy or any injections since, but has been dealing with daily chronic low back pain. Musculoskeletal exam revealed no evidence of joint laxity, crepitation, or effusion. Grip strength remained intact and dexterity was unimpaired. Claimant could button clothing and open a door, had no difficulty getting on and off the examination table, no difficulty heel and toe walking, and no difficulty squatting. When the claimant bent over he had accentuated lower thoracic hump and some degree of scoliosis, but when standing straight

there was only lack of lumbar lordosis. There was tenderness and atrophy noted as well.

Straight leg raising was negative. Claimant's range of motion studies were within the normal ranges but somewhat diminished.

Claimant's neurological exam indicates his cranial nerves are intact, motor strength and tone are normal, and he walked with a normal gait without the use of an assist device.

Exam conclusion is that of chronic lumbar radiculopathy. Claimant had no difficulty doing orthopedic maneuvers, but there was diminished range of motion and some degree of scoliosis when bending forward. Claimant would probably have difficulty bending over to pick up objects, squat down all throughout the day, and stand for long periods of time.

The objective medical evidence on the record includes a Medical Examination Report for [REDACTED] exam. Claimant's chief complaint was abdominal pain with diarrhea and rectal pain. It was noted that claimant's colonoscopy was normal and that his condition is improving and not expected to last more than 90 days. Claimant was limited at lifting/carrying up to 10 lbs., standing/walking at least 2 hours in an 8-hour workday, he could use both of his hands/arms for repetitive actions, but could operate foot controls with his left leg/foot only.

Medical Examination Report for [REDACTED], exam cites the claimant as complaining of low back pain. All of claimant's examination areas were normal except for poor denture and tenderness to touch on middle back. Claimant's condition was indicates as stable, his physical limitations were noted as "as tolerated", and he had no mental limitations. Claimant could meet his needs at home.

EMG study of [REDACTED], due to claimant's complaint of pain and numbness of left upper limb and shoulder shows normal screening and nerve conduction study.

MRI of claimant's left shoulder of [REDACTED], due to claimant's complaint of shoulder pain suggests tendinosis with no partial or complete tear, and shows intact biceps tendon and no fracture or bone bruise.

X-rays of claimant's cervical, lumbar and thoracic spine of [REDACTED], to go with the MRI, indicate no significant abnormalities at the cervical or thoracic spine. There are changes of lumbar spondylosis, predominantly at L5-S1 and L4-5.

MRI of claimant's cervical spine of [REDACTED], indicates that claimant has a minimal bulging disc at C6-7 that appears slightly more prominent than on the previous scan. No evidence of a disc herniation, canal stenosis, or significant foraminal stenosis is seen.

MRI of claimant's thoracic spine of [REDACTED], indicates that there are hemangiomas, dense group of blood vessels, in the T1 and T4 vertebral bodies. The thoracic spine otherwise appears normal.

Orthopedic exam notes of [REDACTED], state that claimant's EMG was within normal limits. Impression was that of left shoulder impingement with degenerative joint disease of the distal clavicle. If claimant obtains insurance, he will be scheduled for surgery.

It is noted that while claimant states he has diverticulitis, he has provided no evidence of any issues connected with this condition except his subjective reporting of diarrhea to his doctor.

There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Diagnostic tests performed on the claimant, MRI's, x-rays and EMG study, do not reveal any type of extensive abnormalities that would support his claim of constant, excruciating back and arm pain that affects his ability to function. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

There is no evidence in the record indicating that claimant suffers mental limitation. The evidentiary record is insufficient to find claimant suffers a severely restrictive mental impairment. 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 was doing various light labor jobs according to his own testimony. Claimant also testified that he did odd jobs as a mechanic from 2004 to 2007, but apparently quit doing those once he was approved for SDA. 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 sedentary and 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 at least sedentary and light work. Under the Medical-Vocational guidelines, a younger individual age 45-49 (claimant is 48), with even limited education (claimant has a GED and training as an automotive mechanic) and an unskilled work history or no work history at all who can perform only sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.18. Claimant can perform at least light work.

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: October 22, 2009

Date Mailed: October 26, 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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