

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: 2009-29152
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 1, 2009
Grand Traverse 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 September 1, 2009. Claimant personally appeared and testified.

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 February 24, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On May 28, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On May 30, 2009, the department caseworker sent claimant notice that his application was denied.

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

(5) On July 22, 2009, the State Hearing Review Team again denied claimant's application stating he was capable of performing other work, namely light unskilled work per Vocational Rule 202.20.

(6) Claimant is a 49 year-old man who is 5'8 ½ " tall and weighs 208 pounds. Claimant has completed 12th grade and 2 years of college in chemistry, calculus and general courses. Claimant can read, write and do basic math.

(7) Claimant states that he last worked in 2004 as a self-employed house painter, job he had since 1980 and that he quit due to not being able physically to do it anymore. Claimant has lived off his retirement accounts up to now, but states these funds have been exhausted. Claimant lives alone in a trailer he owns and receives food stamps.

(8) Claimant alleges as disabling impairments low back pain in his tail bone, and anal discomfort as he believes he has been cut in this area at an early age.

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. 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 radiology report from [REDACTED], due to claimant's complaints of chronic back pain and numbness and tingling in hands and feet. Impression was that of mild spondylosis and no definite fractures were detected.

Medical exam of [REDACTED], indicates that the claimant is self-referred for evaluation of “an anal scar”. Claimant was a somewhat difficult historian and it was somewhat difficult to keep the conversation focused and to be able to follow his train of thought. Claimant chief complaint was that of scarring around his anus and difficulty with bowel function. Claimant also had a lengthy letter. Both the content of the letter and interview with the claimant lead the doctor to be suspicious of a mental illness diagnosis. Claimant described having 1-2 formed stools daily and described his bowels being affected by the wind and other indirect environmental events. Claimant also described some fecal leakage with activity and was very concerned about an anal scar that he states he suffered since childhood, when he had some sort of reparative or reconstructive surgery, he was not sure which. On examination claimant was found to have an entirely normal perineal and perianal examination with no evidence for scar or previous injury. Doctor suspected that the claimant has indeed never had any anal surgery or certainly not any sort of major reconstructive surgery.

Note from DHS caseworker of [REDACTED], states that she spoke with an individual at [REDACTED] who stated that the records she has for the claimant are from 1984, 1991, 1996 and 1999, and they were for colds/flu, nail in knee, and broken finger. Lab reports from 2006 to present were to be sent over. Lab report that is undated is contained in claimant’s records with a diagnosis of Diabetes Type 2. (Department’ Exhibit I, page 47). Claimant did not testify that he had this condition.

Michigan Medical Consultants exam of [REDACTED], upon DHS referral states that claimant’s chief complaints are back pain, neck pain and rectal discomfort. Claimant reported being in a motor vehicle accident in 1984, and that he has had neck and back pain since then. Claimant stated that he finds it difficult to stand or walk for more than 2 hours, do any repetitive

squatting, and that he can no longer mow his lawn and shovel snow or golf. Claimant also reported a history of rectal irritation since childhood and occasional scanty rectal bleeding.

Physical examination indicates that the claimant was cooperative, could hear conversational speech without limitation, and there was normal intensity, clarity and sustainability of speech without stutter. Claimant walks with a normal gait and assistive device is not used. Claimant's peripheral pulses are intact, his feet are warm and normal color, there is no peripheral edema, and varicose veins are not seen. Claimant had no joint instability, enlargement, or effusion. Grip strength remains intact, dexterity is unimpaired, and claimant could pick up a coin, button clothing, and open a door. Claimant had no difficulty getting on and off the examination table, no difficulty heel and toe walking, and no difficulty squatting. Range of motion was normal, as well as motor strength and function. Sensory function remains intact, and reflexes are intact and symmetrical.

Exam conclusion is that, while the claimant reports tenderness in movement in all planes of the cervical spine and in dorsal and lateral movements of the lumbar spine, there is currently no reflex diminution, motor weakness or sensory loss to suggest ongoing nerve root impingement in the upper or lower extremities. As far as claimant's reported rectal discomfort, the examiner notes that his abdominal exam was benign.

Claimant's record contains multiple pages of his writings about what may be wrong with him, some of which are peculiar in nature, such as stating that he has fecal leakage all the time from a tear in his anus and bowel problems. Medical exam from August, 2007 that is cited above clearly indicates that claimant has no tears or scars in his anal area. Claimant testified that he is in pain but not on any pain medication as he can deal with it, and that due to his near-death experiences computers malfunction around him and watch quits working after 2-3 weeks.

Following the hearing and after perusing through some of the information contained in claimant's file, this Administrative Law Judge prepared an Interim Order for DHS to schedule a mental status evaluation with a psychologist or a psychiatrist. According to the local DHS office, claimant at first agreed to attend a psychiatric evaluation when spoken to on the telephone, but when he met with his caseworker on [REDACTED], stated that he has changed his mind, that he has no mental issues, and that his depression is due to his physical condition. Therefore, only evidence of claimant's physical impairments has to be considered in this hearing decision, as there are no records of any mental health evaluation or treatment and claimant testified that he has never been in any type of therapy.

There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical impairment. 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, and claimant has refused to attend a psychiatric/psychological exam to evaluate possible mental limitations. 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 as a painter, and evidence presented does not establish that the claimant has a physical impairment that would prevent him from doing this type of work. 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 at least sedentary and light work, or possibly even medium work. Under the Medical-Vocational guidelines, a younger individual age 45-49 (claimant is 49), with high

school education and an unskilled work history or no work history at all who can perform light work is not considered disabled pursuant to Medical-Vocational Rule 202.20.

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, light and possibly medium 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: __ November 3, 2009

Date Mailed: __ November 5, 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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