

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: 2009-29533
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 27, 2009
Genesee 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 27, 2009. Claimant personally appeared and testified. Also appearing and testifying on claimant's behalf was his caregiver and AA sponsor [REDACTED], and [REDACTED] Supervisor, [REDACTED] [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 May 7, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On May 27, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On June 3, 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 27, 2009, the State Hearing Review Team (SHRT) again denied claimant's application stating that claimant's impairments do not meet/equal the intent or severity of a Social Security listing, and that the medical evidence of record indicates that the claimant retains the capacity to perform a wide range of simple, unskilled work.

(6) Claimant submitted additional medical evidence following the hearing which was forwarded to SHRT for review. On October 8, 2009, SHRT once again determined that the claimant was capable of performing unskilled light work, and was not disabled.

(7) Claimant is a 48 year-old man whose birthday is [REDACTED]. Claimant is 6'2" tall and weighs 265 pounds after gaining 62 lbs. due to medications and smoking cessation. Claimant completed 6th grade and cannot read, write or do basic math.

(8) Claimant testified that he was in prison from 1984 to 1994, then took care of his step father and lived with him, and also had temporary jobs that would last him 1 to 2 months. Claimant states he cannot do any type of work because he was in a bad car accident in 1998.

(9) Claimant had also been staying with friends and relatives, and was drinking and using crack cocaine, but claims he has been clean for the last 4 ½ years. Claimant currently lives in friend's garage and receives food stamps.

(10) Claimant alleges as disabling impairments: psychotic disorder, severe learning disability, ADHD, and arthritis in his back. Claimant has applied for SSI in 2008 but 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 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 to almost non-existent work history. 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 Medical Examination Report of [REDACTED], for claimant’s complaints of chronic back pain from a motor vehicle accident in 1997. Doctor indicates that he has reviewed claimant’s records and finds no record of a closed head injury, and that the claimant denied forgetfulness and blackouts on initial questionnaire. Claimant weighed 242 lbs. All of claimant’s examination areas were normal but chronic lower back pain was noted, apparently based on claimant’s report of it. Claimant’s condition was stable, but he was limited to lifting only up to 10 lbs., and there was no citation of any tests that would support such a limitation.

[REDACTED], medical examination report prepared for Disability Determination Service quotes the claimant as saying he is still dealing with residual pain in his back from a back injury suffered in a motor vehicle accident in 1997. Claimant also stated that he has the continuing complaint of the right leg being slow in starting flexion-type movements, and that he has fallen “a couple of times” when this occurred. Past medical history indicates that the claimant has been in good health. Claimant stated a year ago that he did not know how to drive, but he now stated he does know how but does not have a license. Claimant could feed, bathe and

dress himself, but reported limitations in standing due to pain in his back, sitting for up to 30 minutes, and walking perhaps two blocks.

Physical examination indicates that the claimant is a well-developed, well-nourished, muscular man who is 6'3 ½ " tall and weighs 250 pounds. Claimant did not use an assistive device to walk, and was able to tandem heel and toe walk, squat and recover fully, and get on and off the examining table. His deep tendon reflexes were 2+ and equal at the knees and ankles, no effusions were palpable within the knee joints. Claimant forward flexed normally, but had some muscular spasms. Claimant reported not having any x-rays after his 1998 accident. No significant difference in size was noted in either of claimant's thighs, and his strength was equal on manual muscle strength testing of the quadriceps mechanism of the two legs.

██████████, Psychiatric/Psychological Medical Report from Seasons Counseling Center indicates that claimant reported having a head and back injury from a car accident in 1998, that he did 10 years in prison and that he could not deal with society after being in prison. Claimant was taking no medications, and was not currently receiving mental health services. Claimant stated he had to go to psychotherapy in prison. Claimant reported heavy alcohol and crack cocaine use until 4 years ago. Claimant was basically socially appropriate during this exam, but decided to start making phone calls during the exam, and said he was calling his sponsor in Las Vegas. Claimant moved the chairs in the room to suit him without asking, and put papers all over the examiner's desk without permission. Claimant was 258 pounds and reported no significant weight fluctuations, he was nicely dressed, and his hygiene and grooming appeared to be appropriate. Claimant does not require assistance in scheduling and keeping appointments, and is able to find locations independently. Claimant seemed to be in contact with reality throughout the examination. Claimant's gait, posture and motor activity appeared to be

normal. Claimant's speech was unimpaired, and his stream of mental activity was spontaneous and organized. There was no significant evidence of hallucinations, delusions, persecutions, obsessions, thoughts controlled by others, or unusual powers. Claimant had never attempted suicide; he did report suicidal ideation, but denied current suicidal or homicidal intent.

Impression was that the claimant's mental abilities to understand, remember and carry out instructions are mildly or not impaired, and that his learning problems would not significantly interfere with completion of unskilled work. Claimant's diagnosis was that of mood disorder, history of alcohol and crack cocaine dependence, back pain per claimant, and current GAF of 59.

New Passages Psychiatric/Psychological Examination Report that appears to be from April, 2009 indicates that the claimant presented with good activities of daily living and was well groomed. Claimant did have mood swings during the visit and has a history of not being able to get along with others due to social anxiety and severe irritability as well as symptoms of uncontrollable mood swings, poor sleep and unstable living arrangements.

May, 2009 New Passages notes quote the claimant as saying he was in a car accident in 1998, could not walk and had to go to physical therapy, was in a wheel chair and then started drinking. July, 2009 New Passage notes quote the claimant as having a severe head injury and memory loss from the 1998 accident that now incapacitates him from any kind of self-initiation, and that he must have his sponsor to help him along. Claimant now reported that he was unconscious from his head injury following the 1998 accident, his head was split, and he refused stapling, and bled all night.

Medical Examination Report completed on [REDACTED], quotes the claimant as now stating he has arthritis in his back, closed head injury and memory problems. All of claimant's examination areas were normal except for chronic lower back pain. Claimant weighed 262 lbs.

No indication of what type of medical tests the limitation of not lifting/carrying more than 10 lbs. was based on was given.

Records indicating claimant's reading, writing and math problems were also provided, and they clearly indicate that the claimant is not competent in these areas.

There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical impairment. Claimant has provided no evidence of any injury suffered in the alleged 1997/1998 car accident. Claimant's injuries from this accident as reported to different doctors/psychologists range from having a back injury to having a split head and bleeding all night to being confined to a wheelchair and to having closed head injury that prevents him from functioning without his AA sponsor. Therefore, it is both difficult to determine what kind of injuries the claimant indeed suffered and what kind of lasting effect they have on him. All of claimant's records are based almost exclusively on his own reporting of pain and mental issues. However, medical examination reports do not reveal any serious medical problems and describe the claimant as healthy and in good physical shape. 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. Claimant reports having a violent temper that is difficult for him to control and claims he has a psychotic disorder. Mental health records do not establish that claimant has such a severe disorder. 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 be unable to assess claimant's ability to perform past relevant work as he reports almost non-existent history of such work.

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 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 light work. Under the Medical-Vocational guidelines, a younger individual (claimant is 48 years of age), who is even illiterate or unable to communicate in

English and with an unskilled or no work history who can perform light work is not considered disabled pursuant to Medical-Vocational Rule 202.16.

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 light unskilled 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 4, 2009

Date Mailed: November 10, 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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