

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: 2009-30521
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 3, 2009
Monroe 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 , 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 June 9, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability. Claimant has been receiving SDA for a number of years due to being a Michigan Rehabilitation Services (MRS) client, but these services terminated and department took action to terminate SDA also.

(2) On June 23, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work and that he had a non-exertional impairment.

(3) On June 26, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On June 29, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On August 5, 2009, the State Hearing Review Team (SHRT) again denied claimant's application stating that evidence of record indicates that the claimant retains the capacity to perform a wide range of unskilled, medium work using Vocational Rule 203.14 as a guide.

(6) Claimant submitted additional medical information following the hearing that was forwarded to SHRT for further review. On September 24, 2009, SHRT once again determined that the claimant was not disabled. On September 25, 2009, more medical information was received for the claimant. On September 30, 2009, SHRT again determined that the claimant was not disabled, as he could perform a wide range of unskilled, medium work.

(7) Claimant is a 57 year-old man whose birth date is [REDACTED]. Claimant is 5' 9" tall and weighs 220 pounds after gaining 50 lbs. in the last year due to not moving around a lot. Claimant attended adult education to get a high school diploma and has a problem with reading and writing.

(8) Claimant states that he last worked 10 or more years ago in a cardboard shop for 1 week and at Walmart for 6 weeks. Claimant has been assisted by MRS for a number of years and has been going to school for many years. Claimant states that MRS sent him for electronics training for 2 years, machining for 1 year but that was too hard, and to business trade school.

Claimant has been receiving SDA based on being an MRS client, but MRS services were terminated because there was “too many things wrong with him”.

(9) Claimant has been living with his 87 year-old mother on and off all of his life and she supports him.

(10) Claimant alleges as disabling impairments: diabetes, high blood pressure, sleeping disorder as he wakes up sometimes in the middle of the night, arthritis, torn ligaments in his arm from 3 years ago when he was cleaning out the gutters, back pain in the last 6 months that is getting worse, and ankle and knee 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 in at least 10 years. 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 March 17, 2009 x-rays. X-ray of claimant's left hip that revealed no evidence of acute fracture or dislocation. There were degenerative changes of the lumbosacral spine noted. X-ray of claimant's right knee also revealed early degenerative change without acute abnormality. X-ray of claimant's left knee revealed early degenerative change without acute process. X-ray of claimant's right ankle was normal. X-ray of claimant's left ankle revealed no acute process and only a tiny plantar spur. X-ray of claimant's lumbar spine revealed mild degenerative changes without acute abnormality.

Medical Examination Report of [REDACTED], indicates that the claimant's examination areas are normal except for stiff lower back and knee with reduced range of motion. Claimant's condition is stable but he is limited to lifting 10 lbs. occasionally, standing/walking less than 2 hours, and sitting less than 6 hours in an 8-hour workday. Claimant has no mental limitations.

May 11, 2009, medical evaluation report indicates that claimant's blood pressure was 128/75, his pulse 96 and regular, and his respiration non-labored. Claimant was somewhat belligerent and argumentative and somewhat non-cooperative. Musculoskeletal examination did not show any acute arthritis, arthropathy, joint swelling or deformity. Claimant can ambulate without any assistance, can dress and undress without any difficulty. Heel, toe and tandem walking was somewhat difficult associated with loss of balance, and toes were noticed to be of some deformity on the left side.

There was no open sores or ulcers. Movements at all the joints are normal, grasp is 4/5 symmetrical bilaterally, claimant can get on and off the table without any difficulty, his gait is normal and balance is good, and his fist formation was normal. Neurologically claimant's affect is normal, all cranial nerves are intact, deep tendon reflexes are equal and symmetrical bilaterally, and no muscular atrophy or dystrophy is demonstrable. Impression is that of history of severe joint pain without swelling or other sign of arthritis with chronic aches and pains all over the body with possible history of fibromyalgia which cannot be totally excluded, COPD, learning disability by history, history of hypertension, and history of chest pain with possibility of arteriosclerotic heart disease which cannot be totally excluded.

The examiner also included impressions from claimant's x-rays of [REDACTED], which indicate negative left knee, right ankle, left ankle and left foot, i.e. no abnormalities noted.

Mental Status Examination report of [REDACTED], quotes as claimant's stated disability a chronic pain disorder due to torn ligaments in his right arm, back, knee and hip pain, bone deformities in his left foot, high blood pressure and learning impairment. Claimant has not been employed in the last 15 years because he has been in school. Claimant stated he could be employed at this time, but he has not been able to work because he has been busy in school. Claimant denied any significant family trauma, abuse or neglect other than recalling that his older brother "molested me in my youth and the other one snored really loud". Claimant's work history includes installing cable TV and working with the carnival operating game tables for two or three years. Thereafter claimant has lived with his mother and relied on her for support the past 20 plus years. Claimant admitted to a history of alcohol abuse for which he was in a rehab program once, but denied any other history of psychiatric treatment, counseling or therapy. Claimant stated that he has now been sober on and off and does not drink anything daily now.

Claimant reported residing with his 87 year-old mother in her home. Claimant pays his own bills and does his own shopping. Claimant takes hi mother to the store, does most of the household chores, can cook at the stove and denies any significant disturbance of sleep or appetite with his current medications. Claimant maintains good grooming. Claimant arrived on time for this exam and drove himself to the office. Claimant was neat and clean in appearance, denied any problems with vision or hearing, and walked at a solid confident gait without any means of support. His speech was clear and articulate. Claimant smelled heavily of cigarette smoke but otherwise appeared to be in good general health.

Claimant was cooperative and polite during the formal mental status exam but extremely vague during the interview and history taking. Claimant could not give clear examples of the nature of his exact impairments that would prevent him from working full-time other than saying he has been in school for 15 years. Claimant denied any symptoms of depression or anxiety and claimed that anti-depressant medications have been prescribed just to help him sleep. Claimant did evidence probable learning impairments, as his reading skills are only at a 3rd or 4th grade level. There is no evidence however of psychiatric illness, depression or anxiety that would interfere with his ability to appropriately interact in a social or work environment or do simple routine tasks. Claimant's GAF is listed at 60.

Following the hearing a psychological evaluation dated May, 2001 was provided and showed that claimant's verbal IQ was 79, performance IQ was 81 and full scale IQ was 78. Claimant cited long term alcohol abuse, and also marijuana and cocaine use, but claimed he no longer used any of these substances. The examiner was of the opinion that claimant's substance abuse may have affected his test scores and that they were an underestimate of his one time abilities. Claimant's diagnosis included alcohol dependence and marijuana dependence in early

full remission by his report, and cocaine dependence sustained full remission by his report, mixed learning disorder, cognitive disorder or dementia, and borderline intellectual functioning.

Medical Examination Report of [REDACTED], showed a normal physical examination except for back weakness and pain and bunion deformity. Claimant could only lift less than 10 lbs. due to his back. Another such report of September 12, 2009, showed that the claimant had an antalgic gait with paraspinal muscle tenderness and decreased range of motion of the spine. Lower extremity weakness was noted but not specified. Claimant was noted to be able to lift/carry 10 lbs. occasionally.

Further additional medical records provided following the hearing are a psychiatric evaluation from Community Mental Health of June, 2009. Claimant's multiple medical problems including back, hip and knee pain, cataracts, hypertension, high cholesterol, enlarged prostate, history of kidney stones, and heartburn, are cited, and these problems are stressors for him in addition to having to take care of his 87 year old mother. Claimant's diagnosis is dysthymic disorder, generalized anxiety disorder, nondependent alcohol abuse, episodic drunkenness as claimant revealed he binges on beer once every 1-2 months, and borderline intellectual functioning.

Medical evidence including both claimant's physical issues and his intellectual functioning, 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. Analysis continues to Step 3.

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 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, claimant's ability to perform his past relevant work must be evaluated. Claimant has not worked in the last 15 years and his work history prior to that included only short term sporadic employment in very simple labor jobs. Claimant's physical condition would not allow him to perform any labor jobs that involve heavy lifting.

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 sufficient objective medical evidence that he lacks the residual functional capacity to perform tasks from his prior employment, and that he is physically unable to do more than sedentary and light work if demanded of him. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does establish that claimant has residual functional capacity to perform other work. Claimant is however not disqualified from receiving disability at Step 5 based upon the fact that he has established by objective medical evidence that he cannot perform more than sedentary and maybe light work. Under the Medical-Vocational guidelines, an individual of advanced age (claimant is age 57), with limited education or a high school diploma and an unskilled work history who can perform only light work is considered disabled pursuant to Medical-Vocational Rule 202.04.

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 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 meet 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 does meet 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 inappropriately denied claimant's MA application and took action to terminate his SDA benefits.

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

1. Process claimant's June 9, 2009 MA application and grant him any MA and retroactive MA benefits he is otherwise eligible for (i.e. meets financial and non-financial eligibility requirements).
2. Continue claimant's SDA benefits without interruption.
3. Notify the claimant in writing of these actions.
4. Complete a medical review of claimant's ongoing eligibility in November, 2010, at which time updated medical records are to be obtained.

SO ORDERED.

/s/

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

Date Signed: October 7, 2009

Date Mailed: October 12, 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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