

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: 2009-31186
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 9, 2009
Hillsdale 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 9, 2009. Claimant personally appeared and testified. Also appearing and briefly testifying on claimant's behalf was [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 February 20, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On May 22, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work and also that he had a non-exertional impairment.

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

(4) On July 7, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On August 11, 2009, the State Hearing Review Team (SHRT) also denied claimant's application stating he was capable of performing other work, namely medium unskilled work per Vocational Rule 203.28.

(6) Claimant submitted additional medical information following the hearing which was forwarded to SHRT for review. On January 28, 2010 SHRT once again determined that the claimant was not disabled, as he retains the capacity to perform a wide range of medium exertional work of a simple and repetitive nature. Vocational Rule 203.28 was used as a guide.

(7) Claimant is a 42 year old man whose birthday is [REDACTED]. Claimant is 5'5" tall and weighs 160 pounds. Claimant attended 12th grade and has several years of training as a tool maker and machine builder. Claimant can read, write and do basic math.

(8) Claimant states that he last worked on [REDACTED] as a school maintenance supervisor, job he held for 11 years until he broke his back playing football with his sons. Claimant was on medical leave and then laid off. Claimant also worked at the school in the 1990's, and as a tool maker in the 1980's.

(9) Claimant currently lives in a house owned by his parents and receives food stamps. Claimant was on cash assistance with his wife but they are now separated. Claimant does not have a driver's license as he had an epileptic seizure while driving.

(10) Claimant alleges as disabling impairments: back pain, seizures, depression, bleeding ulcers, chronic pain and numbness in right hip and leg, high blood pressure, asthma, spinal herniation, nerve damage in both legs, migraines, epilepsy, schizophrenia, manic depression and parasites in his blood causing him skin problems.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is

reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments does not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant is not engaged in substantial gainful activity and testified that he has not worked since September, 2005. Claimant is not disqualified from receiving disability at Step 1.

At Step 2, claimant has the burden of proof of establishing that he has a severely restrictive physical or mental impairment or a combination of impairments that is "severe". An impairment or combination of impairments is "severe" within the meaning of the regulations if it

significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work (20 CFR 404.1521 and 416.921; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p).

The objective medical evidence on the record includes a [REDACTED] voluntary psychiatric admission for the claimant. Claimant described increased depression, low self-esteem, and suicidal ideations. Claimant was receiving substance abuse treatment and was sent to the hospital by his counselor. Claimant was facing jail time after he was charged with [REDACTED] issues with his wife. Claimant also reported that he was going to have disk fusion in [REDACTED]. Claimant stated he was in substance abuse treatment in [REDACTED] also, was drinking again up to 12 beers a day, and relapsed about 2 months ago.

Claimant was admitted on a voluntary basis and put on a detox protocol. Claimant was diagnosed with major depression, recurrent without psychotic features, alcohol dependence, back pain, parasites in the blood for which he has a chronic rash and itching, COPD, and GAF of about 50.

Mental Status Examination indicates that the claimant was alert, cooperative and oriented, and that his memory is intact. Claimant did have recent suicidal ideation, but no homicidal thoughts. Claimant denied any visual or auditory hallucinations, and his insight and judgment is fair.

Physical examination revealed a chronic dry rash on his neck, upper shoulders posteriorly, face and head. Claimant stated he ambulates well with chronic low back pain and does not have to use a walker or cane. Claimant complained of numbness and tingling in the

right leg due to the lumbosacral spine pain. Claimant denied loss of consciousness or seizures. Claimant was discharged on [REDACTED].

Medical Examination Report signed by a family practice doctor on [REDACTED] states as claimant's current diagnosis lumbar radiculopathy, chronic tendonitis, and drug, alcohol and tobacco abuse. All of claimant's examination areas are marked as normal except for musculoskeletal and neuro due to back issues. Claimant is limited in lifting/carrying less than 10 lbs. frequently and 10 lbs. occasionally, standing and/or walking less than 2 hours in an 8-hour workday, and can use a cane as needed. Claimant cannot push/pull or operate foot/leg controls due to lumbar disc disease. Claimant has no mental limitations.

[REDACTED] chart note states that the claimant reported having spells of seizures recently, and that his wife has noted six spells in the last six weeks where he passes out, his eyes roll up in his head, and his left leg extends. Claimant reported stopping his heavy alcohol abuse on [REDACTED], and without the alcohol he was somewhat nervous and had hallucinations, so the alcohol rehab place placed him on [REDACTED]. Claimant reported not having a drink in three months. Impression was that of the claimant most likely having epilepsy. Claimant was to have a 24-hour EEG and an MRI of the brain, and if nothing is found, this is part of his alcohol withdrawal event.

Claimant had the 24 hour ambulatory EEG on [REDACTED], which was normal. MRI of claimant's brain of the same date also revealed no acute abnormality.

[REDACTED] emergency medication review for post psychiatric evaluation indicates that the claimant has a long history of alcoholism since age 14, and relapsed on alcohol in [REDACTED]. Claimant stated he had surgery, diskogram at [REDACTED] on his back and was awaiting another one on [REDACTED]. Claimant was walking with stoop forward and some

discomfort was present when walking and sitting due to his recent back procedure. Claimant reported improvement in depressive symptoms and his affect is improved, bright and appropriate. Claimant denied any suicidal/homicidal ideations or plan to harm himself or others, and also denied any auditory/visual hallucinations. There are no paranoid delusions, no grandiose delusions, and no ideas of reference present. Claimant is alert and oriented to self, time and place, and cognitively grossly intact.

██████████ Psychiatric Medication Review indicates that the claimant was just released from jail after developing an allergic reaction to latex paint. Claimant reported being scheduled for back surgery on ██████████. Claimant denied any suicidal ideation, there were no overt psychotic symptoms present, and he was cognitively unchanged.

██████████ Psychiatric Medication Review quotes the claimant as saying that he is doing better on his medications and sleeping about 7 hours per night. Claimant did not complete the blood work ordered during his previous evaluation. Claimant denied any side effects of medication. Claimant's allergic reaction that resulted in dermatitis had significantly improved. Claimant denied drinking alcohol or using illicit drugs. Claimant was given new form for blood work and also urine drug screen form.

Claimant's record also includes a Medical Examination Report that is not signed by any doctor and that is only partial fax of this form. The Report apparently came from Borgess Brain & Spine Institute and was faxed to the department on ██████████. The Report states that the claimant has a "broken back" with low back and right leg pain, and the current diagnosis is lumbar disc displacement. Claimant has a temporary disability with date expected to return to work being "3-6 months after surgery", however there is no indication as when surgery is to take place or if it has already taken place, and what period of time this estimate covers.

Claimant has provided no other psychiatric treatment records after the one of August 20, 2009, when he was asked to have blood work and urine drug screen done to insure his abstinence from drugs and alcohol. Claimant had also provided no detailed information regarding his back issues, and the only information regarding such issues is what he is relating in his visits to the psychiatrist and Medical Examination Report that is not signed and does not indicate when the claimant was seen, when he may have had back surgeries, what his limitations are, or for what period of time his limitations will last. Claimant has also failed to provide medical evidence of numerous physical problems he alleges he has. Claimant stated he suffers from schizophrenia but psychiatric records provided show that he was depressed based on his family problems, having to go to jail due to domestic violence, and also very possibly due to his heavy alcohol abuse, withdrawals from which appear to may have caused him seizure-like symptoms.

There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment, for the reasons stated above and based on medical information contained in claimant's record. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical or 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 school maintenance supervisor. Claimant has not provided sufficient medical information to establish that he is physically unable to perform such job again. 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 medium 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 sedentary, light and medium work. Under the Medical-Vocational guidelines, a younger individual (claimant is age 42), with high school education and skilled work history who can perform medium work is not considered disabled pursuant to Medical-Vocational Rule

203.31. It is noted that even if the claimant was only capable of sedentary work, was illiterate or unable to communicate in English, and had only unskilled work history or no such history, he would still be not disabled due to his relatively young age, according to federal guidelines.

It is also noted that claimant's [REDACTED] stated that she had met the claimant recently, but that "he does have a multitude of medical and psychological issues". [REDACTED] offered no other testimony.

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 Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, page 1. Because the claimant 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, sedentary and 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: April 7, 2010

Date Mailed: April 8, 2010

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

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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