

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: 2009-34158
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 7, 2009
Washtenaw 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 October 7, 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 May 1, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On June 4, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On June 4, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On July 16, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On September 15, 2009, the State Hearing Review Team (SHRT) again denied claimant's application stating that the claimant is capable of performing other work, namely sedentary work per 20 CFR 416.967(a) and Vocational Rule 201.25.

(6) Hearing record was left open to receive additional medical evidence that was forwarded to SHRT for review. On January 9, 2010 SHRT once again determined that the claimant was not disabled, as he was capable of performing other work, light work per Vocational Rule 202.21.

(7) Claimant is a 45 year old man whose birthday is March 27, 1965. Claimant is 5'10" tall and weighs 250 lbs. after losing 50 lbs. due to not being able to perform physical labor and losing muscle mass. Claimant completed 8th grade and has no GED, but also completed mechanic school. Claimant has trouble reading and writing and can barely do basic math.

(7) Claimant, according to a form completed for DHS, last worked from 2000 to 2007 as a heavy auto mechanic, job that ended because he had back pain, could not keep up, and was fired. Claimant has had various auto mechanic jobs since 1985.

(8) Claimant currently lives with his mother and receives food stamps. Claimant has a driver's license and drives short distances, cooks simple meals, but does not grocery shop or clean house, as his family members and girlfriend do this.

(9) Claimant alleges as disabling impairments: low back pain, and degenerative disc disease.

(10) Claimant had applied for Social Security disability and had a hearing on his claim in October, 2009. According to the Bridges SOLQ Data from SSA report, an unfavorable hearing decision was issued on March 12, 2010.

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 has not worked since year 2007. Claimant is not disqualified from receiving disability at Step 1.

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

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

The objective medical evidence on the record includes a doctor’s visit report of September 18, 2007 indicating claimant was a new patient that came in for “mental health reasons”. Claimant reported not being able to work because of inability to finish tasks, and was depressed due to being unemployed and practically homeless. Claimant had a history of Xanax abuse, and while he had been seen for depression in the past and offered medications for it, he refused it. Claimant weighed 269 lbs. at the time.

January 3, 2008 exam report by a licensed psychologist indicates that the claimant related never being in a psychiatric hospital, and that it appears that he never followed through on any referrals for counseling he has received. Claimant’s mood and manners were glum, dysphoric and disgruntled. Claimant’s contact with reality was adequate/normal and no unusual behavior was observed. Claimant’s had logical thought process, and no suicide attempts. Claimant’s diagnosis was major depressive disorder, recurrent/current, personality disorder, and GAF of 55.

X-ray of claimant’s lumbar spine of August 17, 2008 shows spondylotic and degenerative changes in the lower lumbosacral spine especially at L5-S1 where a posterolateral disc extrusion with an ossified/calcified rim effaces the entire left lateral recess and left neural foramina impinging upon the exiting left S1 nerve root. Claimant also had an abnormal bone scan on this date, with degenerative osteoarthritic changes.

Claimant was seen on [REDACTED] by a doctor from [REDACTED], who reviewed x-rays and bone scan of August 17, 2008. Claimant's situation is one where there is not a specific curative measure that will eliminate his symptoms. Physical therapy to learn strategies of managing his degenerative disk condition was suggested to the claimant, but he declined stating he did not feel that it would be helpful. Importance of improving fitness and weight reduction was also discussed with the claimant, as well as moderating activities especially things that involve bending forward and lifting from below his knees.

Medical Examination Report for an exam of March 18, 2009 lists as claimant's diagnosis degenerative spondylosis of the lumbar spine with radiculitis, and degenerative arthritis in hips, knees and feet. Claimant is noted to have limited lumbar mobility and tenderness to palpation of the lower back, antalgic gait, and limited range of motion in his hips. Claimant's neuro exam is normal as is his mental status. Claimant's condition is listed as deteriorating and he is limited to lifting/carrying up to 10 lbs. occasionally, standing/walking less than 2 hours in an 8-hour work day, and sitting less than 6 hours in an 8-hour workday. Claimant can use his extremities for repetitive actions except pushing/pulling that must be less than 10 lbs., and can operate foot/leg controls with both feet/legs. Claimant has no mental limitations.

Medical Needs form completed for an exam of March 18, 2009 states that the claimant can work at a job that is extremely sedentary with ability to sit/lie down as needed. It is believed that claimant's tolerance for even limited activity will be limited.

Social Summary form completed by DHS caseworker on May 1, 2009 states that the claimant has chronic lower back pain, has problem with standing for 10 minutes and becomes very stiff while sitting. Claimant's hands are bulged at knuckles and he has trouble bending

hand all the way in clasp due to severe arthritis that causes him pain in both hands. Claimant reported that he has had an increase in severity of pain in the last three years, and that the pain in his hands developed after he had a motorcycle accident in August, 2008.

Claimant was seen for a follow up on May 14, 2009 after not being seen in several months. Claimant is well established with physical medicine and rehabilitation who have been working extensively with him. Claimant continues to have back pain when he works as auto mechanic, but when he avoids this activity he is pretty much pain free. Claimant was in no acute distress and was strongly advised to consider switching vocations.

Claimant had joint and epidural steroid injections on November 11, 2009, and tolerated the procedures well.

Medical evidence 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. This Administrative Law Judge finds that claimant has met his evidentiary burden of proof at Step 2, and analysis continues.

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, the Administrative Law Judge is of the opinion that the claimant cannot perform his past relevant work. Claimant's past relevant work was as an auto mechanic, and claimant's medical record does establish that this type of job causes the claimant pain and

discomfort due to his physical condition, and that the doctor has advised him he should look into different type of work. Finding that the claimant is unable to perform work which he has engaged in in the past can therefore be reached and the claimant is not 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 is physically unable to do at least sedentary and light work if demanded of him. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity to perform other work. Claimant is disqualified from receiving disability at Step 5 based upon the fact that he has not established by objective medical evidence that he cannot perform sedentary and light work. Under the Medical-Vocational guidelines, a younger individual age 45-49 (claimant is age 45), with limited education and an unskilled or no work history who can perform even only sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.18.

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). However, 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. It is noted that the claimant may be a candidate for Michigan Rehabilitation Services and if accepted as their client, may be able to receive training for sedentary and/or light types of work.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of sedentary and light work even with his alleged impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED, and it is SO ORDERED.

/s/

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

Date Signed: May 10, 2010

Date Mailed: May 11, 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.

IR/tg

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