

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: 2009-4268

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 12, 2009

Ogemaw 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 March 12, 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 September 16, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On October 14, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On October 21, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On October 27, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On November 11, 2008, the State Hearing Review Team (SHRT) again denied claimant's application stating he was capable of performing other work, namely light work per 20 CFR 416.967(b), Vocation Rule 202.17.

(6) Claimant presented additional medical evidence at the hearing. This evidence was forwarded to SHRT for additional review.

(7) On March 23, 2009, SHRT once again denied claimant's application saying he was capable of performing light work.

(8) Claimant is a 48 year-old man whose birth date is [REDACTED]. Claimant is 5' 10" tall and weighs 215 pounds, after losing 10 lbs. in the last 3 weeks due to loss of appetite. Claimant attended the 11th grade and does not have a GED. Claimant is able to read, write and do basic math.

(9) Claimant states that he last worked in June, 2005 for 8 months at [REDACTED] as an [REDACTED], and that this job ended due to him falling down the stairs and injuring his back. Claimant also states that he has been a maintenance supervisor for [REDACTED] for 20-25 years.

(10) Claimant alleges as disabling impairments degenerative spine disorder, several herniated discs, and migraines.

CONCLUSIONS OF LAW

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

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

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

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

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

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

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

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

...Medical reports should include –

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

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

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

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;

- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

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

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

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

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

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

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

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

At Step 1, claimant is not engaged in substantial gainful activity and testified that he has not worked since June, 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 that has lasted or is expected to last for duration of at least 12 months.

The objective medical evidence on the record consists of [REDACTED]. exam notes and tests (Department's Exhibit I, pages 1-17). Chest x-ray of [REDACTED], shows that the claimant has normal heart, lungs and osseous thorax. MRI of claimant's lumbar spine of

[REDACTED], resulted in findings of presence of mild to moderate degenerative changes, a small left paracentral disk herniation at the L3-4 level, and mild relative stenosis at the L2-3 level due to diffuse disk bulge. Evaluation of an x-ray of [REDACTED] of claimant's lumbar spine cites scoliosis and degenerative changes in claimant's lumbar spine. Medical Examination Report of [REDACTED] indicates that this is the first time the claimant has been examined by the doctor completing the report (Department's Exhibit I, pages 18 and 19). Claimant was 5'10 ½ "tall and weighed 209 pounds and his blood pressure was 100/80. All of the examination areas for the claimant were normal except he favored his left leg and limped, had decreased strength in this leg, and complained of pain and loss of breath with forward flexion. Claimant's condition was listed as deteriorating and he had limitations of occasionally carrying 10 lbs. and standing and/or walking less than 2 hours in an 8-hour work day. Claimant did not require assistive devices for ambulation, could use both of his hands/arms for repetitive actions, and could operate foot/leg controls with his right foot/leg. Claimant had no mental limitations and could meet his needs in the home without assistance.

Additional medical information provided by the claimant following the hearing includes an MRI of the lumbar spine of [REDACTED] and [REDACTED] and report on these x-rays by a doctor. The report states that the claimant has back pain status post fall, that no dominant disk herniation is seen, there is a minimal left lateral bulge-disc protrusion at L2-3 to the left of midline without impingement of the thecal sac of any significance, there is no impact on the exiting nerve root as well, there is bulging of the annulus present at L2-3 and L4-5 levels, and claimant has facet arthritis of L5-S1 (Claimant's Exhibit I, page 4).

Claimant's hearing testimony is that he is in daily pain from his back for which he takes Ultram and Vicodin. Claimant further testified that he can sit for an hour to hour and a half,

stand for the same time duration and walk a couple of blocks. It is also noted that additional information provided by the claimant following a hearing contains a page from an SSA determination of claimant's disability application, and states that the records from the Michigan Department of Corrections (MDOC) indicate that the claimant was incarcerated from some time in [REDACTED]. Inquiry through Offender Tracking System indeed shows that the claimant was in prison in [REDACTED] that he was paroled on [REDACTED] and that he is on parole until [REDACTED]. Conditions of claimant's parole include maintaining employment of at least 30 hours per week and making earnest efforts to find and maintain employment. Therefore, it would appear that claimant's parole officer either did not receive information from the claimant that he feels he is disabled and cannot work, or medical information claimant presented is not sufficient to exempt him from MDOC parole employment seeking requirements.

This Administrative Law Judge finds that the medical record presented by the claimant only shows mild disc bulging, no dominant disk herniation, and no evidence of significant neurological abnormality. Therefore, medical information is insufficient to establish that claimant has a severely restrictive physical impairment.

In addition, there is no evidence in the record indicating that claimant suffers mental limitation. The only evidence that the claimant should attend some type of treatment that would even approach some type of mental health treatment is that in his parole requirements. These requirements state that the claimant must submit to alcohol and drug testing (as one of his sentences is for possession of a controlled substance/cocaine) and attend Outpatient Substance Abuse Treatment. The evidentiary record is therefore also 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 medical evidence of claimant's condition does not give rise to a finding that he would meet a statutory listing in the code of federal regulations.

At Step 4, if claimant had not already been denied at Step 2, the Administrative Law Judge, giving great weight that may or may not be deserved to the Medical Examination Report of [REDACTED] (by a doctor that has never seen the claimant prior to this date), somewhat questions claimant's ability to perform past relevant work. This is despite the fact that the claimant's hearing testimony that he became unable to work because he injured himself at work in the middle of [REDACTED] is also questionable, as additional information showed that he has been incarcerated somewhere after this period of time, and this could be the reason why he could no longer work. Claimant's past relevant work was [REDACTED] and as a [REDACTED] and if these jobs involved heavy lifting they could present a problem for claimant's back. Finding that the claimant is unable to perform work which he has engaged in in the past therefore could be reached 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 the very least sedentary and quite possibly 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 work, or possibly light work. Under the Medical-Vocational guidelines, a younger individual (age 48), with limited education and an unskilled or no work history who can perform only sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.18.

The claimant has not presented the required competent, material, and substantial evidence which would support a finding that the claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). Although the claimant has cited medical problems, the clinical documentation submitted by the claimant is not sufficient to establish a finding that the claimant is disabled. There is no objective medical evidence to substantiate the claimant's claim that the alleged impairment(s) are severe enough to reach the criteria and definition of disabled. The claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. PEM, Item 261, page 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is

unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of sedentary and possibly 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: April 6, 2009

Date Mailed: April 8, 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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