

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: 2009-5098
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 12, 2009
Van Buren 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 5, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On October 17, 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 28, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On December 5, 2008, the State Hearing Review Team (SHRT) also denied claimant's MA application stating that the medical evidence of record indicates that the claimant retains the capacity to perform a wide range of medium work, and that his impairments would not preclude work activity at the stated level for 90 days for SDA eligibility purpose.

(6) Claimant submitted additional medical evidence following the hearing, and this evidence was forwarded to SHRT for additional review. On April 3, 2009, SHRT upheld the previous decision stating that the claimant is capable of performing other work, namely sedentary, light and medium unskilled work. SHRT also stated that claimant's drug/alcohol use is material per 20 CFR 416.435.

(7) Claimant is a 43 year-old man whose birth date is December 1, 1965. Claimant is 5' 5" tall and weighs 210 pounds. Claimant has a high school diploma and is currently taking freshman level college courses in general education, 4 hours per week, in hopes of eventually getting a job in parole/probation field. Claimant can read, write and do basic math.

(8) Claimant states that he last worked in March, 2008 driving a truck he owned as a self-employed individual, job he quit due to sleep apnea, diabetes and economy that lead to him not having enough work. Claimant was also a foster care home worker from 1998 to 2001, and worked at [REDACTED] delivering and installing appliances from 1996 to 1998.

(9) Claimant lives in a house owned by his brother who pays household bills. Claimant receives food stamps and Adult Medical Program benefits.

(10) Claimant has a driver's license. Claimant states he is separated from his wife and has his 11 year-old daughter three days out of each week overnight as his wife works different shifts. Claimant drives his daughter to school and picks her up from school, and also drops her off at his wife's house (which is 3 blocks away from him) on the days that she stays there. Claimant drives about 15 miles per day.

(11) Claimant alleges as disabling physical impairments sleep apnea, diabetes, heart condition, brain cluster of blood vessels that causes bad headaches, and high blood pressure. Claimant also states that he has mental impairments due to 20 years of cocaine addiction, and that he last used cocaine about 3 months ago here and there.

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 March, 2008. 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 includes emergency room visits from January to October, 2008, for chest pain, high blood sugar levels, trouble breathing and samples of medications that he had run out of (Department's Exhibit I, pages 1-12). After MRT denial, claimant provided additional medical records (Department's Exhibit II, pages 1-9). CPAP Re-Titration Report states that the claimant has previously been diagnosed with severe obstructive sleep apnea in 2005. Report recommendations were to change CPAP to 16 centimeters of water, after initiating this change in CPAP it was recommended that the claimant be followed up closely to ensure compliance and tolerability. Weight loss was recommended as always in any patient who is overweight as a weight loss of 10-15% may improve sleep disordered breathing. Claimant should never drive when sleepy or drowsy.

Claimant was admitted to a hospital on May 21, 2008. Chest x-ray of May 21, 2008, revealed no active cardiopulmonary disease. X-ray of claimant's cervical spine of May 21, 2008, was negative. X-ray of claimant's left shoulder due to his complaints of pain was also negative on May 21, 2008. No evidence of pulmonary embolism or aortic dissection or aneurism was seen on claimant's chest x-ray on May 22, 2008. EKG portion of the stress test for myocardial ischemia was negative. Claimant was discharged on May 22, 2008, and was doing very well on this date. Claimant's diagnosis was chest pain, diabetes, hypertension, and bronchitis versus early pneumonia.

Claimant provided additional medical information following the hearing (Claimant's Exhibit I, pages 1A-50A). This information includes Mental Health Services notes from November, 2008 to March, 2009, and a psychiatric consultation of January 19, 2009, that

indicates as claimant's diagnosis psychosis NOS, cocaine dependence and history of alcohol dependence. It was noted that the claimant has a long history of uninterrupted cocaine and alcohol use, and the longest period of being clean is 1 month (now). Seroquel medication was stopped since it is not effective at the present dose and is not a favored choice for someone who uses cocaine.

Other notes relate that the claimant, who has worked and supported his family most of his adult life is now unable to drive a truck due to diabetes, that he receives financial support from his family and wife from whom he is separated from, that he is in pain from diabetes, that he has sleep apnea and trouble sleeping despite taking medications to help him sleep, and that he hears voices. On November 11, 2008, claimant stated he is still using a lot of cocaine and that he snorted cocaine 3 days prior. Substance abuse symptoms were those of withdrawal and related social problems. Claimant related having a psychiatric hospitalization in 1987 due to a "blackout" during which he almost beat a man to death, and that he was on medication following this incident. Claimant was appropriately dressed, had normal communication, he reported a lot of anger issues but his affect was primarily appropriate, and his speech was normal for age and intellect. Claimant appeared obsessive about controlling himself, both behavior and substance use. Claimant's behavior/motor activity was normal/alert, he was oriented to person, place and time, his memory appeared impaired short and long term and his insight was fair to poor, but his reality orientation was intact. Claimant stated he had tried to commit suicide when he was 14 or 15, but not since then. Claimant's diagnosis was of adjustment disorder with mixed anxiety and depressed mood, cocaine dependence, alcohol abuse, mood disorder NOS, personality disorder NOS, and psychotic disorder NOS probably substance induced. Claimant exhibited some characteristics of long-term substance abuse, said that he had experienced five significant black-outs and several that were slight, and may suffer from a more significant mood disorder or a

psychotic disorder, but probably substance induced. Claimant may also have some brain damage as a result of 20 + years of significant substance use.

February 3, 2009, Community Mental Health Service note states that claimant's mood/affect, thought process/orientation, and behavior/functioning are unremarkable. Claimant's medical condition is remarkable as he has abrasions and swelling on face from falling on ice. Claimant reported no problems with his medication, but is still unable to sleep and cannot identify any improvement in mood since taking the medication. Claimant reported he saw a neurologist last week for headaches and related symptoms and an MRI was ordered, but could not be performed due to lack of insurance or money for a down payment. Treatment plan objectives are to deal with substance addiction and establish and maintain effective medication regimen. Claimant was again seen on February 17, 2009, and notes do not show anything new from his February 3, 2009 visit. On March 3, 2009, claimant reported that he has been abstaining from cocaine, but drinks alcohol occasionally.

January 21, 2009, medical exam for evaluation of recent onset of unilateral head pain quotes the claimant as saying this pain started 3-4 months ago. Claimant stated that he quit smoking 2 weeks ago, that he had been a chronic user of cocaine but never used it intravenously, and is now attending a rehab program and has not used cocaine in the last 2 weeks. Claimant's blood pressure was 130/92, he was 5'5" and weighed 210 pounds. Claimant was aware, alert and oriented, his speech was spontaneous and fluent, but he appeared in distress because of the moderate intensity pain. There was no evidence of tremors, no abnormal tone of either of the upper extremities, and claimant's muscle strength and deep tendon reflexes were normal and symmetric bilaterally. No subjective loss of sensation was found when tested for light touch, pinprick, cold sensation, or vibration. Claimant walked with normal gait features. Claimant's scalp was tender in the temporal lobe region, his neck was supple with normal range of motion of

the cervical spine, and he had regular cardiac rhythm, no murmur, and normal bilateral breath sounds. No swelling at the ankles was found, and no tender spots along the vertebral spine column. Claimant was assessed with most probably cluster headache, and it was noted that claimant's use of cocaine, a known agent to cause central nervous system vasculitis (inflammation of the walls of small blood vessels), which in turn can result in headaches. Claimant's pain history does not fulfill the criteria of migraine, tension, or current daily headaches. Oxygen inhalation was prescribed, as it is considered a relatively more effective therapy for cluster headache.

There is objective clinical medical evidence in the record that shows that the claimant suffers physical or mental impairment(s), however a conclusion that they are severe cannot be reached, as claimant's continued drug and alcohol use could be causing majority of these impairments. Physical exams provided show no evidence of cardiac issues, and claimant's diabetes has not caused any significant end organ damage. In addition, claimant's hearing testimony is that he has physical custody of his 11 year-old daughter 3 days out of each week and takes care of her while his wife works, which he cooks, does household chores, reads, and walks the dog. This Administrative Law Judge finds that the medical record combined with claimant's own hearing testimony about his physical condition is insufficient to establish that claimant has a severely restrictive physical impairment.

There is no evidence in the record indicating that claimant suffers mental limitations. Record shows that the claimant has had blackouts, anger issues and that he is frustrated with family issues, but that he is not suicidal or homicidal. Evidence presented shows that the claimant's mental state shows no abnormal indications. The evidentiary record is insufficient to find claimant suffers a severely restrictive mental impairment. For these reasons, this Administrative Law Judge finds that claimant has failed to meet his burden of proof at Step 2.

Claimant must be denied benefits at this step based upon his failure to meet the evidentiary burden.

If claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the 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 must evaluate his ability to perform past relevant work. Claimant's past relevant work was driving a truck he owned, job he held until March, 2008. Claimant testified that he had to quit this job due to sleep apnea and diabetes, but also due to the downturn in economy that lead to not having enough work. While it is possible that the claimant could still perform this job as the fact that there is not enough work could be found to be the reason for the job ending, claimant will be given the benefit of the doubt due to his sleep apnea that could cause him to be unable to drive for prolonged period of time. Finding that the claimant is unable to perform work which he has engaged in in the past could therefore 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 to show 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 light, sedentary and medium work. Under the Medical-Vocational guidelines, a younger individual age 18-44 (claimant's age is 43), even if illiterate or unable to communicate in English and with only unskilled work history or no work history at all, who can perform only sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.23.

As previously stated in this decision, claimant's continued use of cocaine appears to be causing not only some of his physical issues but headaches and other mental issues as well. This Administrative Law Judge would be required to consider whether drugs and/or alcohol are causing claimant's disability even if she was to find that he met other disability criteria. The Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) is material to a person's disability and when benefits will or will not be approved. The regulations require the disability analysis be completed prior to a determination of whether a person's drug and alcohol use is material. It is only when a person meets the disability criterion, as set forth in the regulations, that the issue of materiality becomes relevant. In such cases, the regulations require a sixth step to determine the materiality of DAA to a person's disability.

When the record contains evidence of DAA, a determination must be made whether or not the person would continue to be disabled if the individual stopped using drugs or alcohol. The trier of fact must determine what, if any, of the physical or mental limitations would remain if the person were to stop the use of the drugs or alcohol and whether any of these remaining limitations would be disabling. Claimant's record does indicate that if he was to stop using drugs and/or alcohol, at least some of his physical and mental issues would be resolved, and this fact would disqualify him from being found disabled.

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

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. PEM, Item 261, page 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of light, 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 21, 2009

Date Mailed: April 22, 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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