

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: 2009-5101
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 17, 2009
Bay 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 March 17, 2009. Claimant personally appeared and testified along with his mother

[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 19, 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 14, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On November 5, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On December 8, 2008, the State Hearing Review Team (SHRT) again denied claimant's application stating that the medical evidence of record indicates that the claimant retains the capacity to perform a wide range of unskilled medium work.

(6) Claimant submitted additional medical information following the hearing which was forwarded to SHRT for additional review. On May 19, 2009, SHRT review decision was received stating that the additional objective information received does not significantly affect the residual functional capacity. The claimant retains the residual functional capacity to perform unskilled medium work.

(7) Claimant is a 39 year-old man whose birth date is [REDACTED] Claimant is 5'10" tall and weighs 253 pounds. Claimant attended the 11th grade and has a GED. Claimant also has vocational training as auto and truck mechanic, heavy engine and brakes and refrigeration certification.

(8) Claimant states that he is not currently employed and last worked in October, 2006 running sound for concerts while traveling around the country, job that lasted him for 2-3 years and that ended due to his back problems. Claimant has also worked at a refrigeration company where he did research and development on oil testing machines until he hurt his back while lifting a piece of plywood. Claimant received a Worker's Compensation settlement of \$6,000 for this injury in 2002.

(9) Claimant was also a mechanic for 3 ½ years prior to 2002, laid railroad tracks for a year or so, and did odd jobs from 2002 to 2003.

(10) Claimant alleges as disabling impairments: back pain, multifactorial canal stenosis, depression and bipolar disorder.

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 year 2006. 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 an MRI of claimant's lumbar spine of [REDACTED] performed due to the claimant complaining of severe low back pain and numbness in his right leg. This MRI showed mild degenerative changes of the facet joints

throughout the lumbar spine, satisfactory alignment of the lumbar spine, and no bone marrow abnormality. Impression is that of multifactorial canal stenosis at L4-L5 and L5-S1, and narrowing of the neural foramina bilaterally at both of these levels (Department's Exhibit I, page 172).

Neurological Initial Consultation of [REDACTED] states that the claimant reported being injured in 2000 or 2001 while handling a piece of plywood that caused him onset of low back and right buttock discomfort. Claimant stated that he has had back pain ever since, and that he has not worked since approximately 1 ½ years ago when he worked as a sound technician. On neurological examination mental status was normal to detailed history taking. Extremity strength, coordination, tone, and bulk are totally normal in all extremities, both proximally and distally. Sensory examination was normal to pin prick, light touch, joint position sense, and vibration in all extremities. Reflexes are 2+ and symmetric at the biceps, triceps, brachioradialis, knees, and ankles. Toes are downgoing to plantar stimulation. On general examination there is a positive right straight leg raising sign. Claimant reported that his back pain is worse than his right leg pain, and he is therefore not an ideal surgical candidate. Claimant was referred for right sided L5-S1 transforaminal epidural steroid injections (Department's Exhibit I, page 133).

Medical Examination Report from claimant's doctor for the date of last examination being [REDACTED] indicates that all of claimant's examination areas are normal except positive right straight leg raising sign and history of bi polar disorder. Claimant's condition is listed a stable, but the doctor states she is unable to "fully assess" claimant's ability to perform basic work activities such as lifting/carrying, standing/walking and sitting, etc., either based on his physical or mental state (Department's Exhibit I, pages 131 and 132).

Claimant's record shows extensive history of pain medication prescriptions, namely Methadone. Note from a nurse to claimant's doctor dated [REDACTED] states that claimant's mother called and wanted more Methadone because the police raided claimant's house and took his medication. Claimant had a prescription refill scheduled for [REDACTED] and additional Methadone was not prescribed (Department's Exhibit I, page 20).

Doctor's notes of [REDACTED] indicate that the claimant reported having low back pain but that he could not come back for his next prescription due to the fact he will be out of town. Claimant was given a prescription for Methadone dated for [REDACTED]. Claimant was instructed to follow up in two months as he was going to Oklahoma to visit (Department's Exhibit I, page 25).

Disability Evaluation of [REDACTED] states that the claimant moved freely about the examination room, was able to get on and off the examination table without difficulty, and had normal lumbar lordosis. There was localized tenderness over the right posterior superior iliac spine. Claimant had restricted and painful extension and side bending, left greater than right. Seated straight leg raising is negative for radicular pain. Sensation was intact in the lower extremity dermatomes, muscle stretch reflexes were normal and symmetric, plantar responses were flexor bilaterally, strength normal in the lower extremities, and gait normal. Impression was that the claimant has objective evidence of lumbar stenosis on the right at L4-L5 and L5-S1, based on the MRI of July, 2007 (Department's Exhibit I, pages 197 and 198).

On [REDACTED] claimant underwent a psychological evaluation. Claimant's hygiene and grooming were good, gross motor functioning was intact with no overt physical discomfort. Claimant was perceptually oriented and presented his ideas in a logical and coherent fashion, and his speech was readily understandable with no impediments. Diagnostic impression was that of

a bipolar disorder (by history), history of drug dependency and alcohol abuse, and chronic back problems and pain from bulging discs and pinched nerve along with fluid retention. It was noted that the claimant should receive some assistance in managing any benefits assigned due to his history of drug dependency and alcohol abuse. Recommendation was that claimant becomes re-involved in outpatient psychiatric treatment designed to reduce psychiatric symptoms, stabilize daily functioning, and address substance abuse issues (Department's Exhibit I, pages 188-190).

Comprehensive Psychiatric Evaluation of [REDACTED] prompted by a referral from [REDACTED] cites the claimant as saying he is depressed, feeling tired, and that he has had manic episodes in the past. Claimant related that he has never been hospitalized, but was seen by the psychiatrist at [REDACTED] in Flint and also [REDACTED] in Flint from 2007 to 2008. It was noted that the claimant has a long history of polysubstance abuse starting at age 15 with alcohol and marijuana. Claimant denied any current substance abuse except taking prescription medication. Mental status examination revealed no evidence of delusions or hallucinations, cognitive functions are intact, claimant was oriented to time, place and person, there was no impairment of his short or long-term memory, and he denied any suicidal or homicidal ideations. Claimant's diagnosis was bipolar mood disorder and depressive mood with polysubstance abuse in remission, back pain, and GAF of around 55-60. Claimant was to start on particular medication and to return in four weeks time for medication review, but continue his outpatient therapy as scheduled (Claimant's Exhibits A69-71).

Claimant was seen in emergency room on [REDACTED] for complaint of bilateral leg swelling, but did not want to stay until his tests came back, and left against medical advice. ER doctor noted that swelling could be possibly caused by claimant's medication (Claimant's Exhibits A86-87).

MRI of claimant's thoracic spine of [REDACTED] states that spine alignment is maintained, there is no acute fracture or spondylolisthesis, spinal cord is normal in caliber and signal, there are mild degenerative changes at T8-9, T9-10 and T10-11. There is a focal central disc protrusion at T9-10 without spinal stenosis or foraminal stenosis. There is a tiny disc bulge at T8-9 without spinal stenosis or foraminal stenosis (Claimant's Exhibit A78).

MRI of claimant's lumbar spine of [REDACTED] states that there is an artifact in the mid to lower lumbar spine, there is degenerative disc disease at L5-S1, there is disc herniation at L4-5, resulting in significant left neural foraminal narrowing. There is a broad-based disc bulge at L5-S1 with a focal central disc protrusion, resulting in mild spinal stenosis and left more than right neural foraminal narrowing. There are mild bilateral facet changes at L4-5 and L5-S1 (Claimant's Exhibits A76-77).

Clinical Consulting Company evaluation of [REDACTED] states that the claimant is functioning in the normal/average range of intellectual ability, has average reading and spelling skills and his math skills are also average. Claimant was overall most highly interested in occupations in the mechanical vocational area, and his areas of high interest were as a computer programmer, computer system analyst, computer operator, industrial designer, and broadcast technician. Personality Inventory profile indicates that at present claimant's bipolar disorder is being well treated by his medications and psychotherapy. Claimant showed motivation for vocational rehabilitation and stated he liked computers and web design and he had seven computers back home. Recommendations were that claimant is intellectually and academically capable of benefiting from either college or advanced vocational training, but because of his inability to do any significant lifting, he is not capable of pursuing a career in a skilled trade. Examiner also concludes that the claimant is intellectually and academically capable of pursuing

employment in any of the occupations listed in the test result section except truck driving due to his back problems. Training and placement as a computer systems analyst is in line with claimant's interests, challenges and abilities (Claimant's Exhibits A93-112).

There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical impairment. Claimant does have back problems that prevent him from doing heavy lifting, however evidence presented does not establish that he suffers any significant neurological deficits. Claimant testified that he can only sit for 15 minutes before his leg and foot go numb, and stand for 15-20 minutes and walk for 40 yards, then his legs swell up. Medical information cited above notes that the claimant traveled to Oklahoma in June, 2008, trip that would require extensive sitting whether taken by plane or car. Claimant is therefore apparently able to sit for more than 15-20 minutes, and his MRI of January, 2009 when compared to the MRI of 2007 does not show any significant additional deterioration in his back condition over this period of time. Claimant testified that he injured his back sometimes in 2002. Claimant continued to work until October, 2006 with the back injury and traveled around the country setting up sound equipment for concerts, so this back injury apparently was not incapacitating for several years following the date of injury. Claimant visited the ER once for swelling in his legs and left the hospital against medical advice before tests could be completed to figure out what was causing the swelling. There are no other medical records to show that this leg swelling is an ongoing condition, and it would appear claimant would have remained in ER if the condition was constant and serious as he presents in his testimony. Vocational assessment of March, 2009 provided by the claimant does not indicate that his physical or mental condition would prevent him from performing variety of jobs that involve prolonged sitting. There is no other evaluation or indication of severe physical limitations in the medical record presented.

Claimant lives alone, prepares simple meals, showers without help, cleans up the house, drives occasionally in a borrowed vehicle to appointments, and uses computer and watches TV. 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 limitation. Claimant has been diagnosed with bipolar disorder, however as of March, 2009 vocational evaluation claimant appear to have this disorder well under control through the use of medications and psychotherapy. 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 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 is unable to determine with certainty whether the claimant is able to perform past relevant work. Claimant's past relevant work was doing variety of jobs, last being running sound for concerts in October, 2006, job claimant states ended due to his back problems. It is unknown

what amount of physical exertion was required in this job, and if the job involved heavy lifting claimant would most likely not be able to do it due to his back problems. Claimant also performed variety of other jobs since year 2000, but amount of lifting and/or physical exertion they required is also unknown.

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 due to lack of information as to his physical limitations in light of his back problems. Claimant may be unable to perform tasks from his prior employment due to his back issues. However, claimant should be able to perform 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 18-44 (claimant is age 39), who is even illiterate or unable to communicate in English and with an unskilled or no work history who can perform only

sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.23.

Claimant has a GED and additional training, and work experience in variety of jobs.

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 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.

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

Date Signed: June 18, 2009

Date Mailed: June 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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