

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: 2009-6767
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 1, 2009
Mecosta 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 April 1, 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 October 2, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On November 3, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On November 10, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On November 13, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On January 5, 2009, the State Hearing Review Team again denied claimant's application stating claimant was capable of performing other work, namely light work per 20 CFR 416.967(b), and Vocational Rule 202.20.

(6) Claimant is a 48 year old man whose birth date is [REDACTED] Claimant is 5' 9" tall and weighs 170 pounds. Claimant attended the 12th grade but does not have a diploma or a GED. Claimant can read, write and do basic math.

(7) Claimant states that he last worked 7 years ago in a labor job from 1995 to 2002 in a factory, job he was fired from due to leg injury and high blood pressure. Claimant was married and supported by his wife until a year ago, but is currently homeless staying with his mother or friends and receives food stamps.

(8) Claimant has no driver's license because he is behind on his child support payments.

(9) Claimant alleges as his disabling impairments back pain and leg issues. Claimant also had testicular cancer 10 years ago but has not had a recurrence of cancer since, renal failure in 2008 due to drinking that was taken care of over 2 days of hospitalization, and hepatitis C for which he received injections.

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 for last 7 years. 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 a duration of at least 12 months.

The objective medical evidence on the record includes lumbar spine MRI of February 10, 2008 showing developmental narrowing of the lumbar spinal canal with interval postoperative and residual degenerative change and possibility of arachnoiditis at L4-5

(i.e. inflammation causing the thickening and scarring (fibrosis) of the membranous linings of the spinal canal). (Department's Exhibit I, p. 148). Claimant was seen by his doctor on February 26, 2008 for ongoing back pain and his recent MRI showing what appears to be arachnoiditis with clumping of the nerve fibers was noted. Claimant's reflexes were subdued in the lower extremities bilaterally and diminished at the ankles. (Department' Exhibit I, p. 187). March 27, 2008 exam note states that claimant was in pain and was taking [REDACTED] e for the pain. (Department's Exhibit I, p. 188). March 14, 2008 exam note states that the claimant was in acute renal failure recently but refused hospitalization, and claimed that the renal failure was due to excessive methadone which "stopped his urine". Claimant had no reflex in the lower extremities, sensation was also altered with very minimal sensation in the lateral lower extremities bilaterally, and he had exquisite pain on straight leg check and weakness of the left proximal thigh. (Department's Exhibit I, p. 190). On May 21, 2008 claimant again had increased low back pain and virtually no reflexes in the lower extremities. (Department's Exhibit I, p. 1910).

Claimant was referred for an exam by a neurosurgeon on May 27, 2008. Review of his films revealed very extensive changes at the 3-4 level which could be degenerative. Significant narrowing of the spinal canal with arachnoid fibrosis or what could be seeding of claimant's tumor into his canal was cited as a possibility, but a bone scan and possibly a spinal fluid evaluation was needed in order to determine what could be done for him. (Department's Exhibit I, pp. 121 and 122).

An independent medical exam of March 12, 2008 concluded that the claimant has chronic degenerative arthritis, and some atrophy of the right calf as well as reflexive changes which may require further operative intervention. Claimant reported having intermittent blackouts and he

may have underlying hypertensive urgency or hypotension. (Department's Exhibit I, pp. 111 and 112).

On June 23, 2008 claimant was brought to emergency department at the local hospital complaining of back pain. Claimant was noted to be having acute renal failure. Hospital staff reported that the claimant has a history of alcohol abuse with last consumption being 2 days ago. Claimant denied alcohol abuse, was confused and did not know where he was, and gave conflicting and unreliable information. Claimant's blood pressure was 112/76, he had full range of motion of all extremities, 5/5 for all extremities but he had significant tremors and appeared to be quite restless. Claimant reported drinking 6 beers several days prior to hospital admission but denied his alcohol intake is problematic. Claimant also reported he used cocaine in his early 30's, but now uses it very infrequently, and snorted 2 lines of cocaine on June 19, 2008 because he was at a friend's house and it was readily available. Claimant did state that he suffers from back pain and at times will use drugs and cocaine to help mask the pain. Claimant's urine drug screen was positive for opiates, propoxyphene and cocaine on June 24, 2008. During his hospitalization stay claimant developed some anxiety, agitation, and tremulousness which was thought to be secondary to alcohol and cocaine abuse. Medications for these effects were initiated and claimant's symptoms improved dramatically. Claimant's discharge plan notes that his cocaine dependency is causing chronic hypertension and acute renal failure. (Department's Exhibit I, pp. 195-212).

October 17, 2008 findings of claimant's thoracic spine MRI were normal. Findings of claimant's lumbar spine MRI are that of normal alignment, there is L3-L4 level scoliosis with lateral shift of the L4 on L5 and severe, asymmetric, right-sided disc space narrowing at L3-L4. Marrow signal and paraspinous soft tissues are unremarkable. (Department's Exhibit I, p. 236).

Medical Examination Report completed on October 22, 2008 with the date of last examination of the claimant being July 17, 2008 cites as history of claimant's impairments and chief complaints testicular cancer of 10 years ago, chronic hepatitis C, chronic severe alcoholism and drug addiction, and spinal stenosis. Claimant's current diagnoses is chronic lumbar back pain secondary to advanced disc pathology, recurrent renal failure presumed secondary to IV drug abuse, and testicular carcinoma in remission. Claimant was 5'8 and 160 lbs., and his blood pressure was 112/90. Claimant was in severe pain and had slow gait, had no leg reflexes, and mentally showed apprehension and hypervigilance secondary to polypharmacy dependence and withdrawal syndrome. Claimant's condition was deteriorating and he was limited to never lifting/carrying any amount of weight. Claimant could only use his hands/arms for simple grasping and could not use his feet/legs for operating foot/leg controls. Claimant's mental limitations included comprehension, memory, sustained concentration, following simple directions and social interactions. (Department's Exhibit I, pp. 242 and 243).

This Administrative Law Judge finds that the medical record does establish that claimant has a restrictive physical impairment due to his back issues that justifies further analysis. Claimant also appears to suffer mental limitations, but such limitations appeared to be caused by his alcohol and drug abuse. Analysis therefore continues to Step 3.

The analysis proceeds 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, the Administrative Law Judge finds that a possibility exists that the claimant cannot engage in factory labor type jobs he testified he held up to 2002, due to his back issues. Finding that the claimant is unable to perform work which he has engaged in the past could 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's singular medical problem at the present time and during the last year that is not related to his alcohol and drug abuse is his back problems, which appear to be substantial according to the medical reports and MRI's reviewed by this Administrative Law Judge.

Claimant's testimony of being in pain on a daily basis is credible based on the medical reports regarding his back. However, even giving claimant's back issues great weight, the conclusion that the claimant is incapable of any type of work that involves minimal amount of lifting cannot be reached. Claimant should be capable of performing at least sedentary work. Under the Medical-Vocational guidelines, a younger individual (age 45-49), with limited education but at least literate and able to communicate in English and an unskilled or even no work history who can perform sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.18.

It is noted that the Medical Examination Report for the exam of July, 2008 cites various mental limitations for the claimant. 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 testified that he had quit using alcohol in July, 2008, and that he had only used marijuana prior to this date and also quit using this drug in July, 2008. Claimant's testimony is questionable as July, 2008 is the date of his acute renal failure when he was admitted to the hospital, had drunk 6 beers prior to the admission and was known to the local hospital staff as a severe alcoholic, and also tested positive for cocaine and admitted using it two days before the hospital admission. Claimant's mental limitations noted on the report of July, 2008 were exhibited during his documented alcohol and drug use period and it is doubtful they would remain if the claimant was not to stop the use of the same.

In conclusion, although the claimant has 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 at least sedentary 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 6, 2009

Date Mailed: May 7, 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 receipt 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/db

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