

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: 2009-7545
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 2, 2009
Ingham 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 2, 2009. Claimant personally appeared and testified. Also appearing and testifying on claimant's behalf was his wife [REDACTED]

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P), retroactive MA 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 November 5, 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 17, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On January 13, 2009, the State Hearing Review Team (SHRT) also determined that the claimant was not disabled because he was capable of performing other work, namely light work per 20 CFR 416.967(b) and Vocation Rule 202.18.

(6) Following the hearing claimant provided additional medical information which was submitted to SHRT for additional review. On May 5, 2009, SHRT again determined that the claimant was not disabled as his impairment/condition is non-severe per 20 CFR 416.920(c).

(7) Claimant is a 39 year-old man whose birth date is [REDACTED] Claimant is 5' 8" tall and weighs 160 pounds. Claimant attended school until he was about 17 years-old in special education classes, and can read and write on 4th grade level and do very basic math.

(8) Claimant states that he last worked in March, 2007 at a dry wall supply company, job he held for 2 years and from which he was laid off due to lack of work. Claimant has been collecting Unemployment Compensation Benefits and had 2 more weeks left of such benefits at the time of the hearing.

(9) Claimant also worked for 20 years for a drywall company warehouse driving the fork lift and deliver trucks. Claimant had back surgery while working in 1999 and received Worker's Compensation while off work.

(10) Claimant testified that he cannot do any type of work at present time as he has a hard time standing and walking. Claimant lives with his wife in a rented duplex.

(11) Claimant alleges as disabling impairments: bulging disc in his back, degenerative spinal disease affecting several other discs in his back, prostate issues, and a blood infection he recently had due to rotting teeth for which he is on antibiotics.

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, 2007. It is noted that the claimant has been receiving UCB and in order to do so a person must be capable of working and available for work and saying so, or no benefits can be issued. As claimant is not currently working, he 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 examination report of [REDACTED] by [REDACTED]. Report states that the claimant had undergone previous left L5-S1 diskectomy in 1999, and that he has not had leg pain since then but has had some chronic low back pain, which fortunately has not kept him from working. Claimant complained of pain radiating down the back, with pain across the lower back, and sometimes with weakness in his legs. Claimant had no bowel or bladder problems, no loss of sensation in the legs, and he had not had any treatment for this particular pain. Claimant had leg pain with walking, had reflux disease and kidney stones, but no other physical or mental issues. Musculoskeletal examination revealed normal gait, claimant did not require any support for ambulation, tandem gait testing was intact, he could perform heel walk and repeat toe lift without difficulty, spine and soft tissues were nontender upon palpation, motor examination was 5/5 throughout the upper and lower extremities and equal bilaterally, and straight leg raise test was negative bilaterally. MRI of claimant's lumbar spine was noted that showed essentially degenerative disk disease at L4-5 and L5-S1, some minor facet disease, but no significant nerve root compression or central stenosis. Impression was that of chronic low back pain plus new pain about the T8 to T10 region. Recommendation was to get the claimant into some physical therapy and to get an MRI of the thoracic spine to make sure there is no significant pathology at that level (Department's Exhibit I, pages 24-26).

[REDACTED] MRI of claimant's thoracic spine showed mid line posterior disc herniation at the T7-8 level without evidence of cord compression or nerve root compression (Department's Exhibit I, p. 27).

On [REDACTED] claimant had a follow up examination with the neurosurgeon who stated that after reviewing thoracic spine MRI he could not say whether MRI findings were causing any problem. Claimant could be considered for a fusion operation, but he was not

interested in that, and was also not interested in getting any injections. Claimant felt his pain was settling down, and it was recommended to him not to do any heavy lifting (Department's Exhibit I, p. 23).

Medical Examination Report of [REDACTED] shows that all of claimant's examination areas are normal except decreased range of motion of neck and L-spine, pain with flexing of neck, and issues with claimant's knees/ankle. Claimant's condition was listed as deteriorating, he was limited in being able to lift/carry less than 10 lbs., stand/walk less than 2 hours in an 8 hour work day and sit less than 6 hours in an 8 hour workday. Claimant did not need any assistive device for ambulation, could use both hands/arms for simple grasping and fine manipulating, but could not reach or push/pull, and could not operate foot/leg controls with either foot/leg, peculiar conclusion since the claimant testified that he drives (Department's Exhibit I, pages 20 and 21).

Medical Needs form completed by a Physician Assistant on June 5, 2008, states that claimant suffers from lumbago, that he needs assistance with laundry and housework, and that he can work but with such limitations that he would be severely limited to the point of "near uselessness". (Department's Exhibit I, p. 22).

Medical Examination Report for date of last examination being [REDACTED] is completed by a Physician Assistant and again states that the claimant is severely limited in his activities due to pain of movement, limited ROM of back, and guarded improvement (Department's Exhibit I, pages 9 and 10).

Physician Clinical Report from the Emergency Department of [REDACTED] states that the claimant was seen for complaint of jaw pain. Claimant had moderate swelling of the right side of his face and moderate right jaw pain. Claimant was alert, in no acute distress, and had strong tobacco odor on his person. Claimant's vital signs were normal, he had severe, extensive

dental decay, his heart rate and rhythm were normal, his extremities exhibit normal ROM, he was oriented X 3, and had no motor or sensory deficit. Claimant was diagnosed with facial cellulites recheck and given IV antibiotics. Claimant returned to Emergency Department later on the same date for cellulites recheck. Claimant denied any pain and stated that the swelling has completely resolved (Department's Exhibit I, pages 25-27 and 33).

Medical Examination Report of [REDACTED] states that the claimant has chronic prostates, back pain with radiculopathy, and that he has significant limitations in lifting/carrying and standing/walking and sitting, but can use both hands/arms for repetitive actions and can use both feet/legs for operating foot/leg controls. Claimant has no mental limitations (Department's Exhibit I, pages 9 and 10).

Medical Needs form of February 9, 2009, again states as claimant's diagnosis lumbago and radiculopathy, but he is ambulatory, does not need any special transportation or someone to accompany him to the medical appointments, and does not need any assistance with personal care activities. Claimant can work but with lifting limitations and where he is able to move at own pace and time (Department's Exhibit I, p. 11).

There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. MRI's performed in year 2006 do not reveal any significant issues with claimant's spine that would cause him extreme level of limitations noted by his Physician Assistant and doctor. It would appear that such severe limitation conclusions are based on claimant's own reporting of his pain and discomfort. While the claimant's report of back issues and pain is credible, he was working up to March, 2007 with the same issues, until he was laid off, and did not lose his job as a result of inability to perform it. Claimant has been collecting UCB, receipt of which is based on his report that he is available

and capable of working. This Administrative Law Judge therefore must find that the claimant does not meet his evidentiary burden of proof at Step 2.

If the claimant has 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 would have to deny him again based upon his ability to perform past relevant work. Claimant's past relevant work was working at a dry wall supply company operating a fork lift. Claimant states he was in pain while performing this job, however he continued in it until he was laid off. Finding that the claimant is unable to perform work which he has engaged in in the past cannot therefore be reached and the claimant is denied from receiving disability at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform other jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

Claimant has submitted insufficient objective medical evidence that he lacks the residual functional capacity to perform tasks from his prior employment. Even with claimant's physical limitations cited by his treating medical source, he is still physically able to do at least sedentary 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 at the very least sedentary work and likely light and possibly even medium work. Under the Medical-Vocational guidelines, a younger individual age 18-44 (claimant is 39), who is even illiterate or unable to communicate in English and has only unskilled or no work history who can perform sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.23.

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.

/s/

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

Date Signed: June 15, 2009

Date Mailed: June 16, 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.

IR [REDACTED]

cc:

[REDACTED]