

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: 2009-8052

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 2, 2009

Newaygo 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.

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 17, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

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

(3) On November 17, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On November 24, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On January 14, 2009, the State Hearing Review Team (SHRT) determined that the claimant was capable of performing other work, namely light work per 20 CFR 416.967(b) and Vocational Rule 202.21.

(6) Claimant submitted additional medical information which was forwarded to SHRT for additional review. On May 5, 2009, SHRT once again determined that the claimant was not disabled as he was capable of performing light work.

(7) Claimant is a 50 year-old man whose birth date is [REDACTED] Claimant is 6' tall and weighs 213 pounds. Claimant attended the 10th grade and has a GED. Claimant can read, write and do basic math.

(8) Claimant states that he last worked in May, 2006 at a packaging company as a general laborer for 2 weeks, but ended up in a hospital due to his back. Claimant was employed in constructions up to December, 2005 when he was hurt by falling of a roof at his sister's house.

(9) Claimant states that he currently lives with a roommate in a house who helps him out financially and that he receives food stamps. Claimant drives couple of times per week into town, cooks simple meals, grocery shops couple of times per week, mows the lawn a little on a riding lawn mower, and watches TV to pass the time.

(10) Claimant alleges as disabling impairments: compressed vertebrae in his neck, spine and shoulder issues, all of which cause him daily pain.

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 medical evidence on the record consists of information dating back to 2005. Evidence presented also includes previous MA and SDA applications that were denied. Claimant has also been denied SSI and is appealing this decision.

Medical Needs form completed on September 26, 2008, by claimant's doctor indicates as diagnosis herniated disc (c-spine), and chronic back pain. Claimant does not need any ambulatory devices, special transportation, or assistance with any of the listed personal care activities such as dressing, shopping, laundry, housework, etc. Doctor states that the claimant cannot work at his usual occupation or at any job for an unknown length of time (Department's Exhibit I, page 16).

MRI of claimant's pelvis of [REDACTED] shows that the pelvis is normal. MRI of claimant's lumbar spine from the same date shows no acute bony abnormality, mild, multilevel degenerative disc disease, and bilateral, L5 pars intra-articularis defects. MRI of claimant's hip of [REDACTED] shows normal right hip (Department's Exhibit I, pages 18-20).

Claimant was examined in February, 2008, for multiple complaints of pain, but the focus was on his left shoulder. Examination reveals very limited active ROM as well as pain inhibited passive ROM. Claimant had normal internal and external rotation and also normal rotator cuff strength, and there are no areas of palpation tenderness. Review of MRI done in November, 2007 showed impingement with tendinosis but no evidence of any rotator cuff tear. Recommendation was physical therapy, but claimant stated that his insurance will not pay for this. Claimant was issued an exercise booklet and encouraged to work diligently on his active and passive ROM (Department's Exhibit I, page 21).

Doctor's notes from February and April, 2008 indicate claimant continues to smoke despite being told he needs to quit so he could possibly have surgery and address his chronic pain, as surgeon will not operate until he quits smoking (Department's Exhibit I, page 22).

Medical Examination Report for date of last examination being [REDACTED] states as claimant's diagnosis cervical radiculopathy, herniated disc C-spine, chronic pain, left shoulder pain, and left and right arm pain. All of claimant's examination areas were marked as normal except for the pain in his left shoulder and bilateral arm pain. Claimant could lift/carry up to 10 lbs. occasionally, but had no mental limitations (Department's Exhibit I, pages 43 and 44).

Claimant was admitted to the hospital on [REDACTED] due to left shoulder pain. Impression was that of chronic tendonitis in left shoulder, posttraumatic, and arthroscopic acromioplasty of the left shoulder was recommended. Diagnostic operative arthroscopy was performed and rotator cuff was intact. A moderately-sized distal inferior clavicular spur was removed. There were no complications (Department's Exhibit I, page 57).

Following the hearing claimant provided an MRI of his lumbar spine dated [REDACTED]. Impression was mild diffuse disc bulge without focal herniation at L3-L4 as well as L5-S1 level, and mild degenerative disc disease at the L1-L2 level.

There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical impairment. MRI report findings do not show that the claimant has significant issues with his spine, shoulder, or hip that would produce the level of incapacity claimant states he has. This Administrative Law Judge finds that the medical record combined with claimant's own hearing testimony about his physical condition showing he is able to function on a daily basis 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, and claimant testified that he has no such impairment. 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 would have to deny him again based upon his ability to perform past relevant work. Claimant's past relevant work was doing general labor and construction jobs. Giving great weight to claimant's complaints of pain and back issues and to the Medical Report completed by claimant's doctor stating he cannot lift more than 10 lbs., it is concluded that the claimant most likely would not be able to perform his past work.

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

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

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

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

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

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

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

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

Claimant has submitted insufficient objective medical evidence that he is physically unable to do at least light work if demanded of him. Medical evidence including claimant's MRI's, does not establish that the claimant has such serious medical issues that would severely limit his lifting ability. 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, an individual closely approaching advanced age (age 50), with high school education and an unskilled work history who can perform light work is not considered disabled pursuant to Medical-Vocational Rule 202.13.

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 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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