

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: 2009-10423

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 14, 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 14, 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 retroactive MA?

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 21, 2008, claimant filed an application for Medical Assistance benefits alleging disability.

(2) On November 14, 2008, the Medical Review Team denied claimant's application stating that claimant's medical condition lacks duration of 12 months.

(3) On November 26, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On December 11, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On January 28, 2009, the State Hearing Review Team (SHRT) again denied claimant's application stating impairment lacks duration per 20 CFR 416.909.

(6) Claimant submitted additional medical information following the hearing, which was forwarded to SHRT for additional review. On May 8, 2009, SHRT determined that the claimant was not disabled as he was capable of performing other work, namely sedentary and light work per 20 CFR 416.967(a) and (b).

(7) Claimant is a 41 year-old man whose birth date is [REDACTED] Claimant is 5'9" tall and weighs 162 lbs. Claimant attended the 12th grade, has a high school diploma and is currently attending Lansing Community College taking welding classes two times per week. Claimant can read, write and do basic math.

(8) Claimant testified that he last worked in March, 2006 in Arizona for a painting company as an interior and exterior painter for 11 weeks, job he had to quit due to pain in his hip. Claimant past employment included drywall, painting, salesman, laser printer repairman, and construction jobs building and remodeling homes.

(9) Claimant lives alone in his own house that is paid for, and his parents and sister help him out with bills and meals. Claimant drives to college and his parent's house, cooks for himself, does house cleaning such as dusting, dishes and vacuuming, plows snow with a tractor in winter and mows grass with a self-propelled lawn mower.

(10) Claimant fishes in Grand River and some lakes, and watches TV as hobbies.

(11) Claimant alleges as disabling impairments: pelvic fracture that has healed but is sore, herniated discs made worse by pelvic fracture, hip pain he has had on and off since October, 2006, and back pain that has had him “chained to the couch” for the last 2 years.

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).

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 a MRI of claimant's lumbar spine of [REDACTED] due to complaints of low back pain and right leg pain. This MRI was compared to the prior study of June 3, 2007. Impression was that of little interval change compared to the prior study. There remains a moderate sized right paracentral disc protrusion at L4/L5 causing at least mild central canal stenosis and impression upon the descending L5 nerve root. There is also moderate right neural foraminal narrowing at this level without significant impression upon the exiting nerve root (Department's Exhibit II, pages 6 and 7).

MRI of claimant's lumbar spine of [REDACTED] shows little interval change from the [REDACTED] study. Mild areas of degenerative disk disease are unchanged, with no new findings (Department's Exhibit III, pages 4 and 5).

On [REDACTED] claimant was admitted to the hospital after he fell approximately 10 feet from a roof while working at his daughter's house on the scaffolding, and landed on his right hip. Claimant was diagnosed with right pelvic fracture, right pelvic sidewall hematoma, muscular contusion, and chest wall contusion. Claimant underwent an operation and stainless steel pelvic plates and screws were implemented. Claimant was discharged on [REDACTED] with his condition being stable and improved, with instructions to ambulate with a rolling walker which was provided to him. Claimant was to be non-weight bearing on the right lower extremity (Department's Exhibit I, pages 7-17).

[REDACTED] claimant was seen for therapeutic spinal injection (Department's Exhibit III, pages 2 and 3). [REDACTED] letter from the D.O. that performed the spinal injection states that the claimant has been a patient of his for the past 2 years, that despite his best effort and after he underwent extensive physical rehabilitation, surgery, interventional spinal injection therapy, various formulations of medication therapy and activity modification, he continues to struggle with daily functionally impairing pain. D.O. further states that the major time consuming activity of claimant's day is involved in functional pain management of his own medical condition (Department's Exhibit III, p. 1). It is noted that claimant's hearing testimony is that he is in mild pain and only takes aspirin if he has a cold.

There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical impairment. While the claimant has had back issues for couple of years, these issues did not prevent him from roofing in July, 2008, when he fell of the scaffolding that was 10 feet up in the air and broke his pelvis. Claimant was operated on for the broken pelvis and has apparently recovered sufficiently to attend welding classes at a local community college, to take care of his needs in his own home, and to engage in hobbies such as fishing. This Administrative Law Judge finds that the medical record combined with claimant's own

hearing testimony about his physical condition is insufficient to establish that claimant has a severely restrictive physical impairment.

There is no evidence in the record indicating that claimant suffers mental limitations and claimant testified that he has no mental impairments. Therefore, 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 according to his hearing testimony and Medical-Social Questionnaire completed by Medicaid Advocate on July 28, 2008, based on interview with him lists his past jobs to include fixing printers, installer, framer and sales, and type of work as "light". (Department's Exhibit I, p. 6). Claimant should be able to perform such "light" work presently. 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, or that he is physically unable to do at least 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 at least light work. Under the Medical-Vocational guidelines, a younger individual age 18-44 (claimant is 41), even illiterate or unable to communicate in English and having only unskilled or no work history who can perform only light work is not considered disabled pursuant to Medical-Vocational Rule 202.16. Claimant's educational level and work history far exceed this Medical-Vocational Rule description.

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.

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 and retroactive Medical Assistance benefits. The claimant should be able to perform a wide range of sedentary and light work at least 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 10, 2009

Date Mailed: June 11, 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]