

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: 2009-11048  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
April 22, 2009  
Genesee 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 22, 2009. Claimant personally appeared and testified. Also appearing and testifying on claimant's behalf was his friend and mother of several of his children [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 June 20, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On November 21, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On December 1, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On December 16, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On February 4, 2009, the State Hearing Review Team again denied claimant's application stating he was capable of performing other work, namely light unskilled work. Vocational rule 203.17 was cited in addition to notation that Drug and Alcohol Abuse is material per 20 CFR 416.935.

(6) Claimant stated at the hearing that he had additional medical information from his attorney to submit for review. Record was left open until July 22, 2009, for the claimant to provide such records. DHS caseworker informed that the claimant had never provided the records, and the record was closed on July 28, 2009.

(7) Claimant is a 43 year-old man whose date of birth is [REDACTED]. Claimant is 6'1 1/2 "tall and weighs 210 pounds. Claimant completed 11<sup>th</sup> grade and does not have a GED. Claimant can read a little, can only write his name and can do basic math.

(8) Claimant last worked sometimes in the late 1990's as a fork lift driver, job that he was fired from after 2 months. Claimant has also worked in a factory through temporary service and unloading trains.

(9) Claimant testified that he was on SSI for a year, but was then "locked up" for drug trafficking in a jail. Claimant currently lives either with his sister or the mother of his children and receives food stamps. Claimant has applied for SSI in 2005 and 2006 and been denied, and now has an attorney handling his appeal.

(10) Claimant alleges as disabling impairments bullet in his right shoulder that cannot be operated on to be taken out and that affects his arm, back problems, and bi-polar 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 2000. 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 examination report of October 13, 2008, upon referral by DHS. Report states that the claimant was shot in the shoulder 20 years ago and the bullet is still lodged in the tissue over his AC joint. Bullet penetrated the nerve and the claimant complains of intermittent numbness in the right arm where the bullet is lodged, and he also has occasional sharp pain down the arm and numbness and tingling of his fingertips. Claimant also complained of intermittent low back pain beginning in 2005 that radiates down his right leg to his toes, and occasional numbness in his legs. Claimant further

stated that he has episodes where he has sharp pain on the right hip and he has to catch himself from falling when his “leg goes out on him”.

Claimant weighted 193 pounds and his blood pressure was 120/78. Claimant was alert and orientated and in no acute distress. Claimant’s extremities were warm without edema, ulceration or tenderness. Claimant did demonstrate obvious posterior limitations, was unable to demonstrate full shoulder rotation, and has obvious restricted shoulder range of motion. Claimant’s back also demonstrates some restricted range of motion, and his gait was antalgic favoring the right leg. Impressions were those of bipolar disorder, right arm brachial plexus nerve pathology related to bullet wound, and low back pain with radiation to the right leg.

██████████ psychosocial assessment of March 24, 2008, quotes the claimant presenting with mood swings, easily angered, very absent-minded, physical problems, insomnia, bad nerves, and going off on people verbally to physically, last fight occurring recently. Claimant was alert, cooperative, fully oriented, and his intelligence was within the normal range. Claimant stated that since he was shot at age 23 he has struggled with depression, social anxiety and avoidance, paranoid thinking, and both auditory and visual hallucinations. Claimant reported flashback-like symptoms and preoccupation with the shooting incident. Claimant was diagnosed with P.T.S.D., bi-polar disorder, depressed, and social phobia. A variety of goals were set for the claimant such as applying for subsidized housing, staying drug-free (from reported marijuana use), engagement in substance abuse evaluation, compliance with prescribed medications, looking into enrollment at Adult Education program, and enrollment in GED program, among others. Target dates for most of these goals were ██████████.

██████████ psychiatric evaluation of April, 2008 describes the claimant as stating he has “temper problems”, and as being very vague in answering questions. Claimant stated he smokes marijuana to calm himself down. Claimant was diagnosed with P.T.S.D.

Claimant was seen at [REDACTED] for medication review on [REDACTED]. Claimant was not suicidal or homicidal, and past suicidal behavior was checked as "NA". Temper problems were noted. Claimant was dressed and groomed appropriately, calmer and not as angry. Claimant still complained of pain in his right leg and toes and stated he would like some pain pills. He was more communicative and talking more logically.

Claimant failed to provide any documentation for [REDACTED] attendance since June, 2008.

Claimant has reported pain from the bullet lodged in his arm and back problems, and it does appear from the medical examination that he indeed has physical issues of this kind. Claimant testified that he walks the dog, fishes and plays video games which he can sit for 45 minutes, stand for 30 minutes and walk for couple of blocks. A conclusion that the claimant has a severely restrictive physical impairment cannot be reached.

Claimant has also reported what appear to be severe mental residuals from the shooting when he was 23 years of age. Claimant stated he has flashbacks to the shooting, hallucinations, etc. However, according to claimant's own hearing testimony, he was jailed for drug trafficking in this century, and it would appear that he would not be engaging in criminal behavior that could possibly put him in a situation where he could be shot again, if he is indeed having such extreme mental stress from the shooting 20 years ago. Furthermore, claimant has not provided any additional psychological treatment information after June, 2008. Claimant's subjective reports of mental stress are therefore not sufficient to establish he has a severely restrictive mental impairment.

This Administrative Law Judge finds that the medical record combined with claimant's own hearing testimony is insufficient to establish that claimant has a severely restrictive physical or 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 driving a forklift, and he performed this type of a job with the same medical impairments he now has. 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 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 43), who is illiterate and has only unskilled work history or no work history at all, who can perform only 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/

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

Date Signed: September 15, 2009

Date Mailed: September 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.

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