

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: 2009-11978
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 5, 2009
Bay 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 May 5, 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 July 22, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On December 16, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On December 29, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On January 6, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On February 17, 2009, the State Hearing Review Team (SHRT) again denied claimant's application stating he could perform unskilled work per 20 CFR 416.968(a) and Vocational Rule 204.00(H).

(6) Following the hearing claimant provided additional medical information that was forwarded to SHRT for additional review. On July 8, 2009 SHRT once again stated that the claimant is capable of performing other work, namely light work per 20 CFR 461.967(b) and Vocational Rule 201.13.

(7) Claimant is a 51 year-old man whose birth date is [REDACTED]. Claimant is 6' 2" tall and weighs 280 pounds, after gaining 20 lbs. in the last year due to lack of activity. Claimant has a GED and 25 college credits, and can read, write and do basic math.

(8) Claimant states that he last worked in 2007 doing industrial cleaning for less than 2 months, he quit because it was too long of a commute. Claimant also worked for 3 months in 2006 as a cook in a restaurant, and from 1986 to 2004 for Michigan Department of Corrections as a corrections officer, job he resigned from when he was caught with marijuana outside of work.

(9) Claimant lives with his father who supports him and receives food stamps.

(10) Claimant alleges as disabling impairments bad back he has had all of his life, condition that has worsened in the last 5-6 years, degenerative disc disease, emotional problems and depression.

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 2007. 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 note from [REDACTED] & [REDACTED] of [REDACTED] stating that the claimant attended only one therapy-case management session appointment and did not follow through with further appointments resulting in discharge at this time. Social Summary of July 22, 2008, by DHS caseworker quotes the claimant as saying he has not seen a doctor regarding his diminished mental condition, that he was referred for a psychiatric evaluation, and that such evaluation would be helpful for the department to determine any disability he may have.

Comprehensive Psychiatric Evaluation of [REDACTED], states that the claimant was seen following a referral from [REDACTED]. Claimant's chief complaint was that he is very depressed, having bad thoughts and high level of anxiety. Claimant was not on any psychotropic medications, was seen by a psychologist when he was working in the prison in the past, but otherwise had not seen any psychiatrist and never been hospitalized in the past. Claimant stated he has a history of alcohol and marijuana abuse, but has not used any marijuana since February, 2008. Claimant also stated he had a history of cocaine abuse started at age 45, used acid and mushrooms in the past, but denied any current abuse.

Claimant related that he worked for 18 years for the prison system, but he lost the job, was charged with felony and pleaded guilty, and is currently on probation. Mental Status Examination states that claimant's speech is spontaneous and coherent, his mood is depressive with flat affect and impaired concentration, judgment and insight is somewhat limited, at present he does not show any florid psychotic symptoms, and there is no evidence of delusions or hallucinations. Claimant's cognitive functions are intact, he is oriented to time, place, and person, there is no impairment of his short or long term memory, and he denied any suicidal or homicidal ideations.

Claimant's diagnosis is that of major depression, history of polysubstance abuse in partial remission, back pain, and Global Assessment of Functioning around 55. It was recommended that the claimant start on Cymbalta and claimant was agreeable to try the medications.

MRI of claimant's lumbar spine of [REDACTED] for complaints of low back pain and no recent injury, states there is disc space narrowing of all levels, degenerative disc disease except for L2-3, at L5-S1 there is a moderate size central protrusion with impression upon the ventral thecal sac but no canal stenosis or nerve root impingement, and there is moderate to severe degenerative facet arthropathy at L5.

Medical Examination Report for examination date of [REDACTED], states that claimant has degenerative disc disease and is to be evaluated by neurosurgery, that he was 284 lbs. in March, 2009, that his condition is stable but he is limited in lifting/carrying up to 20 lbs. occasionally, not limited in standing/walking and sitting, does not need assistive devices for ambulation, and can use both hands/arms for repetitive actions, as well as use his feet/legs to operate foot/leg controls. Claimant is listed as having no mental limitations.

Medical evidence does not establish that claimant has a severe physical or mental impairment (or combination of impairments) that have more than a minimal effect on claimant's work activities, even though he does appear to have back problems that would prevent him from performing certain work activities. Claimant has therefore not met his burden of proof and his application could be denied at Step 2.

The analysis would proceed to Step 3, if the claimant had not been denied at Step 2, 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 the claimant had not been denied at Step 2, the Administrative Law Judge is unable to determine with certainty that the claimant does or does not have the ability to perform past relevant work. Claimant’s past relevant work was as a corrections officer, job he cannot perform again due to a felony conviction, and that may be difficult to perform even without such conviction due to claimant’s back problems. Claimant’s other work history as stated by him is too minimal to determine if he could perform such jobs (i.e. industrial cleaning in 2007 and cook in 2006).

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 to show that he is physically unable to do sedentary and light work if demanded of him. Medical Examination Report indicates that the claimant can perform such work. 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 (claimant is age 51), who is a high school graduate and has unskilled or even no 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: September 2, 2009

Date Mailed: September 9, 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]