

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: 2009-12833
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 5, 2009
Wexford 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. Also appearing and testifying on claimant's behalf was his friend [REDACTED]

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P)?

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 August 14, 2008, claimant filed an application for Medical Assistance benefits alleging disability.

(2) On December 19, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

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

(4) On January 12, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On February 24, 2009, the State Hearing Review Team (SHRT) also denied claimant's application stating he is capable of performing sedentary unskilled work per Vocational Rule 202.21.

(6) Claimant provided additional medical information following the hearing which was submitted to SHRT for additional review. On May 26, 2009 SHRT once again determined that the claimant was capable of performing other work, namely light unskilled work per Vocational Rule 202.20.

(7) Claimant is a 48 year-old man who is 6' tall and weighs 280 lbs. after gaining 20-30 pounds due to having a bad back. Claimant completed 12th grade and can read, write and do basic math.

(8) Claimant states that he last worked in March, 2008 through a temporary service in a box factory as a general laborer, job that lasted 9 months until the assignment ended. Claimant has also worked in factories and at a marble company, and has been a general laborer in the last 15 years. Claimant is collecting Unemployment Compensation Benefits (UCB) and states he is now on his 3rd extension. Claimant lives with his wife who is employed.

(9) Claimant alleges as disabling impairments: herniated disc, pinched nerve causing his legs to go numb if he is up too long, depression, ADHD, personality disorder, sleep apnea and obesity.

(10) Claimant has applied for SSI in March, 2008 and been denied, and is appealing this denial.

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 March, 2008. Claimant is not disqualified from receiving disability at Step 1. However, claimant is collecting UCB and therefore must be claiming he is able and available for work, as that is the requirement in order to receive these benefits. Therefore, claimant's inability to work, unless he is giving false information for UCB receipt, is somewhat questionable based on this fact alone.

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 MRI of claimant's lumbar spine of September 3, 2008. MRI findings are that of no significant spondylolisthesis or malalignment, no focal suspicious bone marrow lesions or compression fractures. At L2-3 level there is a mild broad-based disc bulge with no significant central spinal stenosis and no significant degenerative facet changes. At L4-5 level there are moderate degenerative facet changes, there is a mild broad-based disc bulge, but there is no significant central spinal stenosis or neural foraminal narrowing. At L5-S1 level there is a moderate to large right paracentral disc extrusion that extends into the right paracentral portion of the canal, this is causing severe right lateral recess narrowing, but there is no significant neural foraminal narrowing or central spinal stenosis, and there are minimal degenerative facet changes. (Department's Exhibit I, pages 17 and 18).

Medical Examination Report completed by a Physician Assistant on [REDACTED] which does not indicate when the claimant was first or last examined states that the claimant's condition is deteriorating, that he has chronic lower back pain, that he cannot lift more than 10 lbs. and can only do a sit down job, but states that he needs to see a neurologist for an evaluation. Claimant has no mental limitations. (Department's Exhibit I, pages 15 and 16).

Neurological exam of [REDACTED] states that the claimant worked in a box factory until he was laid off in March, but somewhere along in May, June or July he had started to have the onset of severe back pain with right hip, thigh and leg pain. Claimant's physical exam appears unremarkable, but he does appear to have an extruded disk at the L4-5 level, and

neurologist plans to have his MRI disk sent so he can review it. (Department's Exhibit I, pages 13 and 14).

Following the hearing claimant submitted Community Mental Health records, including an Annual Assessment with date of intake being [REDACTED]. This report states that the claimant related that he cannot remain in jobs, he has trouble with authority, he has probably had 50 jobs and here he is again. Claimant's mother is living close to him and this is causing him some stress, but he no longer drinks or smokes marijuana and can tell the difference. It is noted that claimant was in a psychiatric unit in 1993 due to confrontations with others, and in outpatient therapy for 8 months between 1998-2001 and 4 months after angry blow-ups in 2007, and has been in counseling since 2008. Claimant denied any suicidal ideation, intent or plan and any homicidal ideation. Diagnostic impression was that of dysthymia, condition of a permanent state of mildly lowered mood that never reaches the severity of clinical depression, ADHD by patient history and therapist's impressions, anxiety and personality disorder, and occupation problems. CMH records also include an evaluation of May 5, 2008 citing claimant's GAF as being 60.

Claimant testified that he has a driver's license, drives 10 hours per week to the store and friends' houses, cooks simple meals, vacuums and does the dishes, cleans up after his dog once per week, and smokes one pack of cigarettes per day. Claimant also testified that his back problems started last summer when he was playing kick ball game with his grandchildren.

Claimant's testimony combined with his MRI indicate that he does have back issues. However, there is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical impairment. While the claimant was examined by a neurologist in November, 2008, it was noted that claimant's MRI would be obtained and evaluated. No follow

up medical documentation from the neurologist that may provide further information of the extent of claimant's back impairment has been provided. 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 limitation. The evidentiary record is insufficient to find claimant suffers a severely restrictive mental impairment. While records provided by the claimant indicate he has been in counseling on and off for several years due to mainly anger issues in dealing with others, he has held a variety of jobs during most of this time, and therefore was not prevented from being employable due to any mental problems. 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 jobs up to March, 2008 when he was laid off and did not end the job due to any physical or mental problems. The origin of claimant's

back issues cannot be exactly established from claimant's medical record, and it is therefore unknown if he had the same issues while he was employed. Finding that the claimant is unable to perform work which he has engaged in in the past cannot therefore be reached, especially in the light of the fact that the claimant is collecting UCB and therefore stating he is able and available for work. 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 sedentary and light work. Under the Medical-Vocational guidelines, a younger individual age 45-49 (claimant is 48), with even limited education and an unskilled work history or no work history who can perform just sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.19. Claimant has a high school diploma and unskilled work history.

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. 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: August 17, 2009

Date Mailed: August 18, 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]