

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: 2009-13001
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 6, 2009
Montmorency 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 6, 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), retroactive MA 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 November 5, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On December 29, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On January 2, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On January 7, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On March 9, 2009, the State Hearing Review Team (SHRT) again denied claimant's application citing insufficient evidence and suggesting additional medical information be provided.

(6) Following the hearing additional medical information was obtained and submitted to SHRT for review. On May 29, 2009, SHRT determined that the claimant was capable of performing other work, namely light unskilled work per Vocational rule 202.18.

(7) Claimant is a 45 year-old man whose birth date is [REDACTED]. Claimant is 5' 9" tall and weighs 205 pounds. Claimant attended the 9th grade and does not have a GED. Claimant can read, write and do basic math.

(8) Claimant's work history according to Medical-Social Questionnaire he completed in November, 2008 indicates he last work from May, 2008 to September, 2008 as a heavy equipment operator, job he left due to lack of work. Claimant also was self-employed catching bait and cutting firewood from April, 2006 to April, 2008, as a heavy equipment operator from March, 2003 to May, 2005 when he was hurt on the job, and again as a heavy equipment operator from November, 1993 to November, 2001 and January, 2002 to February, 2003.

(9) Claimant received a Worker's Compensation settlement in 2004 or 2005. Claimant has an SSI application filed in December, 2008 currently pending

(10) Claimant alleges as disabling impairments: ruptured disc, pinched nerve, back, neck, knee and hand pain, hepatitis C and high blood pressure.

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 2008. 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 consists of medical records going back to end of 1980's and from 1990's. Discharge Summary of September, 1995 states that the claimant was admitted to a hospital after getting his left hand stuck in the belt of a wood chipper. Claimant's left index finger was amputated and repairs were done on his left middle and ring fingers. (Department's Exhibit I, page 120).

May, 2006 letter from [REDACTED] states that the claimant was successfully discharged from residential treatment; he is to receive outpatient services and to contact his probation agents when he gets home in order to nail down legal obligations and probation requirements. Claimant testified in the hearing that he has no driver's license because he has had several DUI's, last one being in 2004, and it would appear his addiction treatment may have been the result of alcohol issues. (Department's Exhibit I, page 46).

MRI of claimant's lumbar spine of [REDACTED], concludes that the claimant has degenerative changes of the lower lumbar spine with bulging disk present at L4-5 and L5-S1 with right paracentral protruding component present at L4-5 with caudal migration and slight impression upon the right traversing nerve root. MRI report notes that this however does not produce significant central canal stenosis. Similar, though slightly less prominent changes are noted at L5-S1. Inferior lateral recess narrowing is present bilaterally at these levels though the exiting nerve roots appear clear. (Department's Exhibit I, pages 78 and 79).

Exam of claimant's cervical spine of [REDACTED] shows no evidence for fracture, subluxation or bone destruction. The disc spaces are symmetrical, the neural foramina are widely patent, and the prevertebral soft tissues are normal. Impression is that of degenerative disease with no acute bony pathology visualized. (Department's Exhibit I, page 80).

Medical Examination Report for a [REDACTED], exam by a physician that first examined the claimant on [REDACTED] states a claimant's diagnosis chronic back and neck pain, and nicotine abuse. Claimant weighed 209 lbs. It is noted that the claimant reported his weight at 205 lbs. at the time of the hearing stating he had gained 10-15 lbs. in the last 4-5 months. Claimant's blood pressure was 160/110. Antalgic gait was noted. Claimant was limited in lifting/carrying no more than 20 lbs., standing and/or walking less than 2 hours in an 8-hour workday, and could not use his hands/arms for any repetitive actions. Medical findings that support listed physical limitations are cited as "pending MRI results". Claimant had no mental limitations. (Department's Exhibit I, pages 94 and 95).

Medical evaluation of [REDACTED] performed at SHRT suggestion cites as claimant's chief complaints neck, back, knees, hands, two head injuries. Claimant related he was hit by a truck when he was 18 years-old, fell off a ladder in 2005 on his neck and sustained a crushed injury to his right hand, he underwent lumbar spine surgery when he was 18 years-old, and now has chronic neck and back pain as well as pain in his hands and knees. Claimant has not had any physical therapy other than pain management. Claimant reported not working since 2008 because of arthritis in his neck and his degenerative arthritis. Claimant was living with his family in a home; he is able to do activities of daily living and does do some light household chores. Claimant reported enjoying tinkering with wood and fishing but did not do any yard work. He is able to climb stairs, uses a walking stick on occasion, about once every two months, he can walk upwards of one mile, he can stand about two hours and sit about 10 minutes. Claimant stated he cannot lift anything more than 10 pounds.

Evaluation conclusion is that of arthritis which appears to be mostly involving claimant's cervical and lumbar spine. Claimant did have some diminished range of motion in his shoulders

due to pain in his neck. His grip strength and dexterity however were well preserved. Claimant did have some power loss and hyperreflexia in the right foot and does compensate with a guarded gait but does remain relatively stable. Some of claimant's symptoms do appear to be due to deconditioning. Claimant would benefit from weight reduction and range of motion activity especially for his shoulders to avoid any further progression. Claimant's current prognosis is fair to guard. Avoidance of overhead work and repetition would be indicated in the short term.

There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. This Administrative Law Judge finds that the evidence presented 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. 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 operating heavy equipment, job he held until middle of 2008 with same impairments he is now claiming, and that ended due to lack of work. 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 45-49 (claimant is 45), with limited education and an unskilled work history or no work history who can perform only sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.18.

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 that are more than insignificant, 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: _____

Date Mailed: _____

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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