

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: 2009-20233

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 30, 2009

Kent 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 June 30, 2009. Claimant personally appeared and testified. Also appearing on claimant's behalf was his daughter.

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 November 13, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On January 16, 2009, the Medical Review Team denied claimant's application stating that claimant had a non-exertional impairment.

(3) On January 22, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On February 27, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On May 7, 2009, the State Hearing Review Team (SHRT) also denied claimant's application stating his impairment/condition was non-severe per 20 CFR 416.920 (c).

(6) Claimant submitted additional medical information following the hearing which was forwarded to SHRT for review. On September 2, 2009, SHRT again determined that the claimant was not disabled as he was capable of performing other work, namely medium unskilled work per Vocational rule 203.14.

(7) Claimant is a 57 year-old man whose birth date is [REDACTED]. Claimant is 5' 10" tall and weighs 150 pounds. Claimant completed 12th grade and can read, write and do basic math.

(8) Claimant states that he last worked in April, 2003 at the [REDACTED] driving a truck to pick up donated items, job that lasted him 1 ½ years until he developed wrist problems from lifting. Claimant was denied Worker's Compensation. Claimant also worked in short term labor job for 7 months in year 2000 and 2001, and operating a drill rig from 1994 to 2000.

(9) Claimant has lived with his daughter for the last six years and provided child care and housekeeping for her. Claimant moved out of his daughter's house in September, 2008 and moved in with his sister, where he currently lives. Claimant receives food stamps.

(10) Claimant alleges as disabling impairments: neck and back pain, tachardia his heart being out of rhythm, anxiety and depression that he feels he has worked through at this time.

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 2003. 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 or a combination of impairments that is "severe". An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or

combination of impairments is “not severe” when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual’s ability to work (20 CFR 404.1521 and 416.921; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p).

The objective medical evidence on the record includes a Medical Examination Report of [REDACTED], for back and spine issues. Claimant’s diagnosis was cervical radiculopathy and sacroiliac dysfunction. All of claimant’s other examination areas are normal, his condition is listed as improving, and he has no physical limitations.

[REDACTED], Medical Examination Report completed by an orthopedic doctor indicates that the claimant’s condition is stable after he fell down a flight of stairs, and that he has no physical or mental limitations. No medications were prescribed by this doctor’s office. Attached to this Report is evaluation status post fall of [REDACTED] that the claimant had consumed 18 Tylenol #3 on September 9, 2008, in an apparent suicide attempt. Claimant was found by a neighbor after he had fallen down a flight of stairs. Claimant was brought to the hospital and evaluated; including CT scan of the cervical spine which failed to demonstrate any significant bone injury, but the claimant still had cervical tenderness and was placed in a collar. Claimant stated he has had a meeting with a medical professional regarding his suicide attempt and he feels he is in a “much better place”. Claimant has had no other attempts or any suicidal ideations since this episode, and now complains of neck pain.

On physical examination claimant was seated comfortably in the examination room and did not appear to be in any acute distress. Claimant has left-sided paraspinal tenderness. X-rays of claimant’s cervical spine demonstrate findings consistent with advanced cervical spondylosis at the C5-C6 level. Otherwise, no other significant abnormalities are seen on these images.

Overall alignment appears to be acceptable. In addition, flexion and extension cervical spine films were ordered, performed, and reviewed, and they fail to demonstrate any significant evidence of instability. Impression is that of cervical stenosis, left upper extremity radiculitis, and chronic history of low back pain. No surgical intervention was deemed appropriate at the time given claimant's recent suicide attempt, and a psychological evaluation prior to any consideration of surgery should be completed.

Final Report from the hospital following claimant's suicide attempt of [REDACTED], indicates that he was seen by the psychiatrist during his recent admission and refused to take any antidepressants. Claimant was having palpitations and has had a long history of these. Cardiac monitoring during his hospital stay did not show any arrhythmia even though the claimant was complaining of palpitations.

[REDACTED] Screening of [REDACTED], indicates that the date of claimant's last physical exam was March, 2000. Claimant did not present any risk to himself or others. [REDACTED], CT scan of claimant's neck shows no evidence for significant carotid artery stenosis.

Claimant was seen by a cardiologist on [REDACTED] at the Arrhythmia Clinic. Claimant reported having palpitations since early 90's, and currently they were happening once a month, lasting up to 30 minutes, and going on and off for some time during the day. Claimant was alert, oriented and in no respiratory distress, and his blood pressure was 100/64 with pulse 72 and regular. Claimant's chest is clear to percussion and auscultation. Cardiovascular examination reveals normal pedal pulses, and no murmurs, rubs or gallops are detected. Neurologic exam is without motor or sensory deficits. Claimant was diagnosed with rapid regular heart beat for which he could have a minimal surgical procedure, ablation. Claimant

wanted to think about the procedure and to discuss it with his family prior to deciding if to have it done.

New information provided by the claimant following the hearing includes physical therapy records from end of year 2008. [REDACTED], progress summary indicates that claimant has made progress in range of motion and reduction of symptoms. Claimant still has decreased sensation and left cervical/shoulder pain. Claimant's posture is a limiting factor.

Office/Clinic notes of [REDACTED], state that the claimant complains of neck and back pain. Claimant cited physical therapy after his fall in September, 2008 and that he had improvement in range of motion and decrease in pain. Claimant had 5/5 muscle strength, his radial pulses were 2+, and biceps and triceps reflexes were 2+ and symmetric. Flexion, abduction and external rotation of his hips do cause the claimant significant S1 joint pain on this date. Assessment was that the claimant appears to have radicular symptoms that are intermittent, and doing exercises for low back strengthening would be beneficial for him. Claimant was not interested in a cervical spine fusion due to having intermittent symptoms.

There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical impairment. This Administrative Law Judge finds that the medical record 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. While the claimant did have one suicide attempt in September, 2008 and such event is not being minimized in this hearing decision, claimant himself reported being better to mental health professionals, and there is no evidence to show he continues to suffer from suicidal thoughts. Claimant also declined antidepressant medications. 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 driving a truck for [REDACTED] to pick up donated items. It is also noted that the claimant lived with his daughter for 6 years, up to September, 2008, providing housekeeping and child care for her. These type of services are marketable also, and claimant could engage in same type of work for pay. Furthermore, the orthopedic surgeon stated that claimant has no physical or mental limitations on the Medical Examination Report of [REDACTED]. None of the other medical information provided indicates that claimant has any significant physical or mental limitations. 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 medium 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, light and medium work. Under the Medical-Vocational guidelines, an individual of advanced age (claimant is now 57 years of age), with high school education and an unskilled work history who can perform medium work is not considered disabled pursuant to Medical-Vocational Rule 203.14.

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 light, sedentary and medium 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: November 5, 2009

Date Mailed: November 6, 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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