

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: 2009-21943  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
July 8, 2009  
Grand Traverse 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 July 8, 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 January 5, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On March 2, 2009, the Medical Review Team denied claimant's application stating that claimant was capable of past relevant work.

(3) On March 24, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On March 26, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On May 29, 2009, the State Hearing Review Team (SHRT) denied claimant's application due to insufficient evidence and requested additional physical and psychiatric examinations be performed.

(6) Additional information was received following the hearing and forwarded to SHRT for review. On October 5, 2009, SHRT determined that the claimant was not disabled as he was capable of performing other work, namely light work per Vocational Rule 202.14.

(7) Claimant is a 51 year-old man whose birth date is [REDACTED]. Claimant is 5'11" tall and weighs 210 pounds. Claimant completed 12<sup>th</sup> grade, can read, write and do basic math, and is currently in an apprentice program to be a tattoo artists with the help of Michigan Vocational Rehabilitation (MRS).

(8) Claimant states that he last worked in January, 2007 at a stamping plant in Ohio, job he held for less than a year and from which he was laid off from. Claimant also worked in 2005 for about 4-5 months in a plastic injection factory. Claimant took care of his mother from October, 2002, and also painted houses and drove a semi truck.

(9) Claimant currently lives in a rent-subsidized apartment, is on SDA because he is an MRS client, and receives food stamps.

(10) Claimant alleges as disabling impairments: shoulder and back pain, degenerative disc disease, bi-polar disorder, depression, and non-insulin dependent diabetes.

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 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 an [REDACTED], MRI of claimant's right shoulder due to complaints of pain, showing possible severe tendonitis rather than a definite tear. [REDACTED], MRI of claimant's lumbar spine indicates mild posterocentral bulging of L1-L2 and L4-L5 intervertebral discs, degenerative disc changes at L1-L2, L2-L3, and L4-L5 levels, but no evidence of any spinal stenosis.

Emergency Department Report of [REDACTED], cites claimant's complaint of back pain since that morning. Claimant has had a history of chronic back pain from 2003 when he fell down some barn stairs. Claimant has been off pain meds for over 2 months, and states he thinks he slept wrong, causing the back pain. Claimant drove himself to the hospital, and did not use a cane or walker. Claimant's vital signs were stable, he was alert, oriented to person, place and time, he had a positive straight leg bilaterally, good flexion and extension bilaterally, and good dorsal pedis bilaterally. Claimant was given pain meds and was discharged with improvement of his symptoms.

Emergency Department Report of [REDACTED], states that the claimant was seen for shoulder and back pain. Claimant had a frozen left shoulder. On [REDACTED], claimant was seen for complaints of chest pain on the left side caused by hard coughing. X-ray of claimant's chest was normal. It was noted that the claimant smokes about a pack per day.

On [REDACTED], claimant was seen for pain in the left shoulder. Claimant was able to shoulder shrug without significant discomfort, passive flexion and extension was intact but did cause pain, and passive internal and external rotation was limited due to discomfort. Claimant was able to resist motion in all directions without significant discomfort, to touch the

opposite shoulder, but was unable to reach behind his back. Claimant had no pain with palpation of the arm, elbow, forearm, or wrist, and there was good motor-sensory function of the hand and fingers.

Mental Status Examination performed upon the referral from the department of [REDACTED], quotes the claimant as describing his back and shoulder pain, and depression he has struggled with most of his life, but that worsened when he was taking care of his dying mother in 2002 and 2003. Claimant was not taking anything for pain at the present time because of his past difficulty with drug addiction. Claimant is currently involved in an apprenticeship program for tattooing and has been doing this for about a year. Claimant related that he has much difficulty with arm strength and being able to stand or sit for any length of time due to back pain, but he was able to stay at the tattoo parlor for about 10 hours daily because he was given the freedom to get up and down as needed.

Claimant is organized and goal directed in his thinking and appears to have no difficulty with understanding what is spoken to him or expressing himself. Claimant denies psychotic or obsessive-compulsive symptoms, but a doctor in Ohio diagnosed him with bipolar about five or six years ago. Claimant denied that he has had particular manic episodes, but stated that he often feels irritable and finds that people are irritable. Claimant had once suicide attempt about 30 years ago, but denied suicidal plan at present.

Claimant was diagnosed with Mood Disorder, Polysubstance Dependence in sustained remission (as the claimant related he used cocaine and alcohol but has not done so in many years), and a GAF of 45.

Michigan Medical Consultants evaluation of [REDACTED], cites as claimant's chief complaints diabetes type 2, back and shoulder pain. Claimant was cooperative throughout

the examination and walked with a normal gait without the use of an assistive device. All of the examination areas were normal with the exception of musculoskeletal. While the claimant had no joint instability, enlargement, or effusion, his grip strength was diminished on the left versus the right. Claimant's dexterity is unimpaired; he could pick up a coin, button clothing, and open a door. Claimant had no difficulty getting on and off the examination table, no difficulty heel and toe walking, and no difficulty squatting. Claimant's motor strength and function are normal, range of motion was also within normal ranges even though somewhat diminished, and there is no shoulder atrophy or spasm.

Conclusions are those of hypertension reported by the claimant, but his blood pressures on the date of exam are known to show excellent control, there was no evidence of hypertensive retinopathy, peripheral vascular disease, or congestive heart failure. Claimant also reported a history of diabetes. There did not appear to be evidence of diabetic retinopathy, and there is no overt evidence of peripheral neuropathy. There was no reflex diminution, atrophy or motor weakness noted. As far as claimant's back and shoulder pain, there was diminished range of motion in the shoulders especially noted on the left, and there was also somewhat diminished grip strength on the left versus the right. Claimant reported sensory changes in the left lower extremity distal to the knee, but currently there was no reflex diminution, atrophy or motor weakness to suggest ongoing nerve root impingement.

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 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. 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 finds that his ability to perform past relevant work is questionable due to back and shoulder issues. Claimant's past relevant work was doing factory work, and he could have problems performing heavy lifting or repetitive actions. Finding that the claimant is unable to perform work which he has engaged in in the past can therefore be reached 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 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. It is noted that claimant's record quotes him as saying he can perform tattoo work and would do so for 10 hours per day as long as he can change positions. Under the Medical-Vocational guidelines, an individual closely approaching advanced age (claimant is age 51), with high school education and an unskilled 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. Claimant however may meet SDA eligibility criteria if he continues to be an MRS client.

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. (As already stated, claimant has been and may continue to meet SDA eligibility criteria if he is an active MRS client without being deemed disabled). 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:     November 4, 2009    

Date Mailed:     November 5, 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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