

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: 2009-23663
Issue No: 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 18, 2009
Antrim 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 August 18 , 2009. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for 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 March 31, 2009, claimant filed an application for State Disability Assistance benefits alleging disability.

(2) On April 6, 2009, the Medical Review Team denied claimant's application stating that claimant's physical or mental impairment does not prevent employment of 90 days or more, per BEM 261.

(3) On April 10, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On April 20, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On June 8, 2009, the State Hearing Review Team again denied claimant's application stating that the nature and severity of claimant's impairments would not preclude work activity of a wide range of simple, unskilled, medium work, per Vocational Rule 203.21.

(6) Claimant testified at the hearing that he had additional medical evidence to present, and record was extended for 90 days for him to do so. Claimant has failed to provide any additional medical information as of May 3, 2010 despite the department contact with him about such information, and record was closed on this date.

(7) Claimant is a 54 year old man whose birthday is [REDACTED]. Claimant is 6'1" tall and weighs 210 lbs. after losing 50 lbs. in the last 2 years. Claimant has a GED and can read, write and do basic math.

(8) Claimant states that he last worked in May, 2008 in a factory shipping and receiving department packing boxes, job through [REDACTED] that lasted him 1 week until he was told to leave. Claimant also worked laying carpet and tile 10 years ago and in other [REDACTED] jobs, for a total of a year after 2000. Claimant states he was living with someone who was supporting him until she died 2 years ago.

(9) Claimant currently lives in a trailer he bought on a land contract and receives food stamps. Claimant does not have a driver's license as it was suspended due to his failure to pay fines for a DUI he received 3-4 years ago.

(10) Claimant alleges as disabling impairments: hypertension, gastroesophageal reflux disease, osteoarthritis, elevated cholesterol, severe bad teeth with abscess, and depression with paranoid characteristics.

CONCLUSIONS OF LAW

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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 State Disability 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

Under the SDA program rules a person must have a physical or mental impairment which meets federal SSI disability standards for at least 90 days. BAM 261.

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 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 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 New Patient Consultation of December 18, 2006 and assessed with osteoarthritis with inflammatory component particularly involving right knee, flexor tenosynovitis, bilateral hands, poor health habits, markedly poor dentition, and probably alcoholism. Doctor wanted to aspirate and inject claimant’s right knee which he declined.

A [REDACTED] in response to request for medical records for the claimant states that he has not been seen there since September 10, 2007.

March 20, 2009 x-ray of claimant’s left knee shows mild degenerative osteoarthritis with no obvious acute process. X-ray of the right knee shows mild relative narrowing of the medial joint compartment with spur formation medially and also at the patellofemoral joint suggesting degenerative osteoarthritis, mild to moderate in degree. There is no acute process. X-ray of claimant’s cervical spine shows satisfactory alignment, there is no obvious fracture, dislocation or destructive lesion, and the soft tissues as viewed are unremarkable. X-rays of claimant’s lumbar spine show severely degenerative disc disease at the L5-S1 level, grade 1

dexterity unimpaired. Range of motion of the joints was full. Claimant's cranial nerves were intact, his motor strength and tone normal, reflexes intact and symmetrical, and he walked with a normal gait without the use of an assist device. Conclusion was that of emphysema and that the claimant appears to have a mild degree of impairment, as he did not appear short of breath or hypoxic on the day of the exam.

February 11, 2009 Psychiatric/Psychological Medical Report indicates that the claimant reported no history of mental health treatment and was not taking any prescribed medications. Claimant reported living alone and that he drinks alcohol three or four times a week, a pint of vodka and eight to ten beers at the time. Claimant further reported having no friends, having little contact with his family, and that he takes care of his own basic activities of daily living with a typical day consisting of laying on the couch. Claimant's diagnosis is that of alcohol dependence, major depression, single episode, moderate severity, probable personality disorder, N.O.S. including passive aggressive, schizoid and paranoid characteristics, health problems, and a GAF of 59. Claimant's prognosis is guarded and would be substantially improved should he obtain appropriate medical and mental health as well as substance abuse services.

December, 2008 physical exam enclosed with State Hearing Review Team decision and obtained from [REDACTED] states that claimant reported multiple arthralgias but range of motion was normal in all joints except his shoulders. The neurological examination was also normal, and x-rays of both knees showed minimal to mild changes.

Medical evidence has established that claimant has an impairment (or combination of impairments) that has more than a minimal effect on claimant's work activities. This conclusion is based on claimant's osteoarthritis condition. See Social Security Rulings 85-28, 88-13, and 82-63. There is no evidence in the record that the claimant suffers mental limitation. Analysis continues to Step 3.

At Step 3 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 the Administrative Law Judge would be denied based upon his ability to perform past relevant work. Claimant's past relevant work was doing simple, unskilled factory 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 [REDACTED], published by the [REDACTED] [REDACTED]. 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, or possibly even medium work. Under the Medical-Vocational guidelines, an individual closely approaching advanced age (claimant is 54 years of age), with even limited education (claimant has a GED) and an unskilled work history who can perform only light work is not considered disabled pursuant to Medical-Vocational Rule 202.10.

In conclusion, 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 department's Bridges 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. BEM, Item 261, page 1. Because the claimant does not meet the definition of disabled under the federal SSI guidelines 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.

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 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: May 4, 2010

Date Mailed: May 4, 2010

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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