

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: 2009-25823
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 28, 2009
Saginaw 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 28, 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 12, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On March 17, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On March 23, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On April 21, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On June 25, 2009, the State Hearing Review Team (SHRT) again denied claimant's application stating that he retains the capacity to perform a wide range of medium work per Vocational Rule 203.28 as a guide.

(6) Claimant presented additional medical information following the hearing that was forwarded to SHRT for review. On August 20, 2009, SHRT once again determined that the claimant was capable of performing other work, namely light work per 20 CFR 416.967(b) and Vocational Rule 202.20.

(7) Claimant is a 47 year-old man whose birthday is [REDACTED]. Claimant is 5'8" tall and weighs 188 pounds. Claimant has a GED and training as a professional hockey official.

(8) Claimant states he last worked in 2001, loading and unloading jet aircraft for Northwest Airlines. Claimant started this job in March, 2001 and the job ended when he was injured. Claimant received a Worker's Compensation settlement after being on such benefits for 2 ½ years. Claimant has also worked as a baseball umpire officiating contests from April, 1980 to September, 2001, and as a stage hand for concerts and plays.

(9) Claimant is currently living with his sister and receives food stamps. Claimant has a driver's license but states he rarely drives due to medications he is on. Claimant quit

smoking 1 year ago, drinks alcohol with friends once or twice per month, and does not use any drugs, but states he did use cocaine before 2001.

(10) Claimant alleges as disabling impairments: cervical disc disease and heart attack in 2005 that did not result in much damage to his heart.

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 2001. 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 [REDACTED], doctor visit report quoting the claimant as having low back pain. Claimant’s gait was stable, his coordination and strength were intact, straight leg raise was positive bilaterally, and his range of motion was limited due to pain.

[REDACTED], report from [REDACTED] when the claimant was seen for a follow up states that he has had occasional pain in the left chest area and thought it was probably related to indigestion, as it happened after eating. Claimant has shoveled snow without any discomfort. He had stent placement to the left anterior descending in January, 2005. On physical examination claimant’s blood pressure was 152/90 and pulse 77, heart tones normal, there was no murmur, and lungs were clear. Claimant’s EKG was normal. It was noted that the claimant has a history of alcohol and cocaine abuse.

X-ray of claimant’s right knee of [REDACTED], for right knee pain showed a normal right knee.

[REDACTED], Medical Examination Report indicates that claimant has lower back pain and anxiety along with herniated L4-5 per MRI of October, 2007. Claimant’s condition is stable, he can lift 10 lbs. to 20 lbs. frequently and 20 lbs. to 25 lbs. occasionally, and he can stand and/or

walk at least 2 hours in an 8-hour workday and sit less than 6 hours in an 8-hour workday.

Claimant has no mental limitations.

MRI of claimant's lumbar spine of [REDACTED], for complaint of low back pain showed a tiny central L4-L5 herniated nucleus pulposus without spinal stenosis. Lower lumbar facet hypertrophic changes are also noted which may be responsible for claimant's symptoms.

MRI of claimant's cervical spine of [REDACTED], showed right neural foraminal stenosis at C4-C5 and mild right neural foraminal narrowing at C5-C6 level from uncovertebral degenerative changes and facet degenerative changes.

[REDACTED] Return Visit Progress Notes of [REDACTED], quote the claimant as having two episodes of left lateral chest sharp pain that lasted 2 hours and for which he took nitro. It is noted that the claimant cited as his activities ice skating the night before, house repairs and yard work. [REDACTED] note of [REDACTED], states that the claimant requested medication and also wanted the doctor to know he started a new job today and was having a little bit of cardiac problems, but thinks it may from anxiety from new job.

[REDACTED] Health Examination of [REDACTED], performed for Disability Determination for SSA states that the claimant is alleging disabilities due to cervical disc disease and previous myocardial infarction with stent placement. Claimant related that he was working for an airlines in 2001 when he developed pain in his neck, and eventually a diagnosis of ruptured disc was made and operation done. Claimant continued to have some mild pain in his neck, but did cash settlement with the airline in 2004. Claimant stated he was working in his yard when he developed a recurrent pain in his neck, and since then he has had difficulty in moving his neck to either side or backward and forward. Claimant also stated that he can only sleep for short periods of time, he has cervical stenosis, he gets pain in his right arm if he sleeps

on his right side, and he has had some pain in his right thigh in the last six week. Claimant has not had any medical care directed toward this.

Claimant also related that in 2005 he developed a severe pressure-like pain in his chest, and was taken to the local hospital where a cardiac catheterization and a stent were placed in one of his arteries. Since then the claimant has only had to use nitroglycerin two times, but gets panic attacks with some chest pain. Claimant continued to smoke a pack of cigarettes a week.

Claimant's blood pressure was 120/84. Claimant's lung field were clear without wheezing, rhonchi or rales, heart sounds were regular without murmur, rub or gallop, and no enlargement. Claimant's upper and lower extremities appeared to be symmetrical, there was no noted atrophy, there was good strength and good motion, straight-leg raising produced no symptoms, he walked with a normal gait, and could walk on his heels and toes but had difficulty bending forward to only 45 degrees. Assessment was that the claimant certainly does show neck stiffness at the present time, but appears to have made a good progress from the myocardial infarction with a stent placement as he did a nine minute stress test without abnormalities three months ago.

Psychiatric/Psychological Medical Report of [REDACTED], states that the claimant related having panic attacks that started when he underwent an MRI after his back injury, and that he has a lot of panic attacks at night. Claimant has never been in a psychiatric hospital, counseling, or substance abuse treatment. Claimant stated he has never abused substances and that he was arrested once for a DUI.

Claimant's contact with reality was good and his insight was fair, his motor activity was normal, his motivation is fair and he can function independently. Stream of mental activity was spontaneous, logical and organized. No evidence of hallucinations, delusions, persecutions, or

other unusual thought content was noted during the interview. Claimant denied any suicidal ideation but reported somatic complaints and sleep disturbances. Claimant shared that his mood was good, and his affect was appropriate. Claimant's diagnosis was panic disorder without agoraphobia, and a GAF of 50.

Emergency Care Center Report of [REDACTED], when claimant presented to the emergency department with history of chest pain quotes him as saying he had done cocaine early on last night, but was unclear on exact quantity of cocaine that he took. Claimant also stated that he drank alcohol. Claimant reported smoking approximately a pack a day, drinking greater than 4 times a week, and currently using cocaine. Claimant then stated to a doctor that he was using "quite a bit of cocaine" last night and then developed chest pressure this morning. Claimant was diagnosed with acute anterior lateral wall myocardial infarction.

There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical impairment, despite documentation that he does have back and neck issues. Claimant has had a stent placed in his heart in January, 2005 based on heart issues that may or may have not been caused by his cocaine use. Medical documentation does not indicate that such heart issues continue and the claimant has been doing well. 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. Claimant cited panic attacks during the exam arranged by DDS for SSA, but has not sought any treatment or counseling for his alleged psychological problems. 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 it questionable that he could perform any past work that could involve heavy lifting. Claimant's past relevant work as reported by him was doing labor work for airlines, as a stage hand for concerts and plays, and as a professional hockey official. It is noted that claimant reported to his doctor's office having some type of a job in 2006, but he did not reveal any such job in his hearing testimony. Finding that the claimant is unable to perform work which he has engaged in in the past based only on the jobs he reported could therefore be reached and the claimant may not be 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 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 (claimant is age 47), with high school education and an unskilled or no work history who can perform light work is not considered disabled pursuant to Medical-Vocational Rule 202.20.

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 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 19, 2009

Date Mailed: November 24, 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]