

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: 2009-26258
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 1, 2009
Montcalm 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 October 1, 2009. Claimant personally appeared and testified along with his stepson.

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 December 11, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On March 13, 2009, the Medical Review Team denied claimant's application stating that claimant was capable of past relevant work.

(3) On March 19, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On May 1, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On June 29, 2009, the State Hearing Review Team (SHRT) also denied claimant's application stating he was capable of performing past work per 20 CFR 416. 920(e), and cited such work as at least light unskilled work.

(6) Claimant provided additional medical evidence following the hearing that was submitted to SHRT for additional review. On October 12, 2009, SHRT once again determined that the claimant was not disabled, for the same reasons cited on June 29, 2009 decision.

(7) Claimant is a 55 year-old man whose birthday is [REDACTED]. Claimant is 6'4" tall and weighs 338 lbs. Claimant has an associate degree in music, and can read, write and do basic math.

(8) Claimant is currently employed watching an elderly lady for \$200 per month in addition to living rent-free in her two apartment houses. Claimant cooks two meals per day for this lady and makes sure she does not fall, etc. Claimant was a piano technician until 2005 for 16 years, but had to stop doing this type of work due to hand tremors.

(9) Claimant alleges as disabling impairments: head injury, vertigo from this injury, atrial fibrillation, diabetic neuropathy, and arthritis in knees, hand tremors, permanent muscle damage in left shoulder from a bike crash in June, 2008, and swelling in right leg, sleep apnea, hypertension, gastro reflux and depression.

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 as he is earning \$200 per month which would not qualify as such activity, and testified that he has not worked since year 2005 in a full time job. It is noted that claimant's work history printout from Office of Quality Performance indicates he had worked in year 2007 for Lakeview Area News and earned \$2,916. 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], cardiovascular evaluation that states claimant was seen at the hospital on [REDACTED] and admitted with atrial fibrillation with rapid ventricular response. When the claimant was seen on [REDACTED], he was in normal sinus rhythm. Claimant's symptoms of palpitations have improved with the use of medication.

On [REDACTED] claimant was at the hospital for complaints of chest pain. Claimant has been off his medication for about 3 weeks and reported 4-day history of chest discomfort and palpitations, but he was currently chest-pain free. Claimant had undergone noninvasive stress testing with the last test in April, 2007, which was negative for myocardial ischemia. Claimant admitted to binge drinking the night before his hospital admission, and vomiting associated with ETOH use. Claimant had previously smoked ½ pack per day for 18 years but quit in 1985, has a long history of alcohol abuse and admits to heave binge drinking and increased alcohol use over the past few weeks. Claimant also reported he has been drinking daily for 1 year. Assessment was that of atypical chest pain, recurrent atrial fibrillation with ventricular rates now currently well controlled ETOH abuse, which is most likely contributing to the recurrent atrial fibrillation, hypertension, diabetes mellitus type 2, and medication noncompliance.

[REDACTED], psychological examination report performed at the request of Disability Determination Services quotes the claimant as saying his condition involves "essential tremors,

arthritis in the knees, arteriolar fibrillation, diabetic neuropathy, depression, and high blood pressure". Claimant was currently prescribed Celexa, Topamax, Metoprolol, Warfarin, Claritin, and Xanax. Claimant was not currently participating in mental health counseling services, and denied any history of psychiatric hospitalization. Claimant reported first experiencing depression in 2001 and 2002 during a period in which he experienced death in the family, marriage and financial problems. Claimant denied active suicidal ideation, any suicidal gestures or self-injurious behavior.

Claimant also reported he was drinking in his 30's eight to ten beers per day, that his last use of alcohol was on [REDACTED], and that he also had a relapse from sobriety in March, 2007. Claimant performs activities of daily living, such as food shopping, meal preparation, cleaning, etc., independently. Claimant's intelligence appeared average and no psychotic intrusion was observed. Stream of mental activity was spontaneous and well organized. Claimant reported experiencing hallucinations three months ago during a hospitalization, but it appears this was medication-induced.

Claimant's diagnosis is major depressive disorder, generalized anxiety disorder, alcohol abuse noting self-report 15-year period of sobriety with two episodes of relapse in March, 2007 and May, 2008, medical issues, and with a current GAF of 45.

[REDACTED], x-ray of claimant's cervical spine due to a bicycle accident showed no acute abnormalities, and degenerative changes at the C5-C6 disk level. CT of claimant's head due to the same accident was negative, as was the x-ray of his left shoulder.

[REDACTED], MRI of claimant's left shoulder indicated possible dislocation or tear of the biceps tendon, but this could not be confirmed. [REDACTED], x-ray of claimant's chest due to atrial fibrillation revealed no evidence of acute disease in the chest.

On [REDACTED], claimant was at the hospital after falling four days prior to the ER visit. Claimant stated he was walking down his basement steps and stepped on his shoelace and fell hitting the back of his head, then felt dizzy while going up the stairs and fell forward and hit the front of his head, and then also fell on his left shoulder. Claimant denied using alcohol prior to the fall on [REDACTED], but admits to binge drinking after the fall, and does anticipate restarting Alcoholics Anonymous soon. CT of claimant's head showed some frontal as well as temporal contusion. [REDACTED], CT of claimant's cervical spine following a fall reveals no evidence of a fracture. X-ray of claimant's left shoulder of this date also reveals no evidence of acute fracture or malalignment at the left shoulder. Claimant was discharged on [REDACTED], with a diagnosis of closed head injury with intracranial hemorrhage, and in stable condition. Claimant had a follow-up CT of his head on [REDACTED], which revealed a resolution of intracranial hemorrhage in the interval since [REDACTED].

Claimant had a brain MRI on [REDACTED], for complaint of persistent vertigo. No evidence of an acute ischemic event or intracranial mass was found.

On [REDACTED], claimant was seen by a cardiologist for a cardiovascular evaluation. Claimant reported overall feeling well and not experiencing chest pain since December, 2008, but continues to have shortness of breath on exertion and right lower extremity swelling. Claimant weighed 347 pounds and his blood pressure was 116/84. Assessment was that of abnormal stress Myoview of December, 2008 which showed evidence of inadequate blood flow to the hearth. Further evaluation with left heart catheterization is recommended. Claimant also has persistent atrial fibrillation and EKG in the office today shows ventricular rates are well controlled. Claimant is asymptomatic, and Coumadin therapy will be resumed until after left heart catheterization. Claimant's blood pressure is controlled on Lopressor.

Cardiologist report of [REDACTED], states that the claimant underwent left heart catheterization on [REDACTED] 009 and was found to have moderate coronary artery disease. Claimant was feeling well but has continued complaints of dizziness since his subdural hemorrhage in December. Claimant was alert and oriented times three, and in no acute distress. Claimant's extremities show no cyanosis, clubbing or edema, and there are 2+ pedal and radial pulses palpated bilaterally. Claimant's musculoskeletal and neurological exam is normal. EKG shows atrial fibrillation. Recommendations are that the claimant continues with his medication aggressive risk factor modification for his moderate coronary artery disease. Claimant's permanent atrial fibrillation rates are controlled currently, and he is not on Coumadin at this time. Claimant's hypertension is controlled. Claimant's bilateral burning leg pain is likely related to neuropathy due to his history of diabetes.

On [REDACTED], claimant underwent surgery on his left shoulder. Claimant had a follow-up exam on his left shoulder on [REDACTED]. Claimant was doing very well, said that he only has minimal discomfort in the joint, and that his pain is significantly improved compared to the status before the surgery. Claimant still had a limited range of motion, but his incisions are healed, there are no signs of inflammation, and his staples were taken out. Claimant is to start with range of motion exercises.

There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. While the claimant does have medical issues, none of them rise to the level of being severe. 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 cites depression as one of his impairments, he has provided no records of previous mental health treatments. The only record pertaining to claimant's mental condition is the examination at the request of Disability Determination Services. 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 as a piano technician, job he stated he had to quit because of "tremors", but there is no medical evidence of what kind of "tremors" claimant indeed had/has. 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 light work if demanded of him. It is noted that the claimant receives \$200 per month for helping and watching his landlord, an elderly lady, and that he cooks for her and makes sure she is safe. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record in addition to claimant's own testimony 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 at least sedentary and light work. Under the Medical-Vocational guidelines, an individual of advanced age (claimant is age 55), with high school education or more (claimant has an associate degree in music and was a piano technician, a skilled type of job) and with even an unskilled work history who can perform light work is not considered disabled pursuant to Medical-Vocational Rule 202.05.

It should also be noted that while the claimant testified he has a history of alcohol abuse and that he only relapsed in early 2008, his medical record shows that he went on a drunken binge in December, 2008 after he fell, and was to go to Alcoholics Anonymous again, something which appears he has not done. The extent of claimant's continued alcohol abuse is therefore

questionable, and even if he met the disability criteria, possibility that his alcohol use is material to his disability per 20 CFR 416.435 exists, in which case he would not be eligible for disability.

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 4, 2009

Date Mailed: November 19, 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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