

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: 2009-26262
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 26, 2009
Kent County DHS

ADMINISTRATIVE LAW JUDGE: Ivona Rairigh

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on August 26, 2009. Claimant personally appeared and testified. Also appearing and testifying on claimant's behalf was his friend [REDACTED]. Claimant was represented by [REDACTED], [REDACTED].

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 March 19, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

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

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

(4) On May 5, 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 other work, namely sedentary work per Vocational Rule 201.24.

(6) Claimant submitted additional medical information following the hearing that was forwarded to SHRT for review. On January 25, 2010 SHRT once again determined that claimant was capable of unskilled sedentary work, and therefore not disabled.

(7) Claimant is a 39 year old man whose birthday is [REDACTED]. Claimant is 5'7" tall and weighs 210 lbs. after gaining 20 lbs. due to medication and lack of activity. Claimant completed 9th grade and has no GED, and can only read, write and do basic math somewhat.

(8) Claimant states that he last worked in March, 2008 at a factory picking parts, job that lasted him 1 ½ years until he quit. Claimant has also worked delivering dry wall.

(9) Claimant lives with his disabled father in a house and has been helped by his friends. Claimant also receives food stamps.

(10) Claimant alleges as disabling impairments neck, back and hip pain, migraines, eye ball aches, depression and bi-polar disorder.

(11) Claimant has applied for Social Security disability and been denied, and is appealing the denial.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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 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 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 March, 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 an August 15, 2008 neurological surgeon visit. Claimant was a very vague and poor historian, and no meaningful history could be obtained. Claimant has been complaining of recurrent and nagging pain in his neck for the past one year. Claimant vaguely described the pain as radiating down both upper extremities around the upper and outer aspect of the brachium, states he has numbness and tingling in his hands which is nearly constant and does not change with any activity, other than some movement of the cervical spine, which increases the pain in his neck and upper extremities. Claimant also stated that he wakes up in the night with increasing numbness, tingling, and burning in his hands, he tends to drop things, and his friend volunteered that he will have spontaneous jerking of all his limbs when he is sleeping. Claimant additionally reported chronic and nagging pain in his low back which tends to radiate toward both legs, standing and walking are worse, and he also had bladder and bowel incontinence and impotence. Claimant also described numbness and tingling in his lower extremities, primarily in his calf and his toes, and felt that his toes get quite cold.

Claimant was quite short of breath with audible wheezing. Claimant continues to smoke a pack and a half per day, but quit alcohol about six months ago. Examination of claimant's cervical spine reveals moderate paraspinal spasms with some restriction of mobility. Examination of the lumbar spine similarly reveals moderate paraspinal spasm with some restriction of mobility. Review of the cervical spine MRI shows degenerative changes with a mild degree of foraminal stenosis at C3-4 and C4-5. At C6-7 there is also a degree of foraminal stenosis and canal stenosis from retrodiscal spurring. Surgeon does agree with the radiologist that the changes in the disc spaces are probably degenerative in origin. Exam report concludes

with the opinion that the claimant is too incapacitated at this time for any gainful employment, and he was advised to stay off work until he is somewhat more comfortable.

MRI of claimant's lumbar spine of February 9, 2009 due to complaints of low back and left leg pain is stable showing minor degenerative changes from L4 through S1 along with a left paralateral broad-based disc protrusion/herniation with associated annular tear mildly impinging upon the traversing left L5 nerve root within the foramen.

March 10, 2009 report from neurological surgeon quotes the claimant as complaining of pain in his low back, left hip and leg, neck and left upper extremity with occasional headaches. Review of the lumbar spine MRI does indicate significant hypertrophic changes of the facets. The examination reveals moderate paraspinal spasm in the cervical and lumbar regions, and straight leg raising on the left at 80 degrees will cause pain in claimant's low back and left hip. Claimant tends to support his weight on his heels and toes, though with some difficulty on the left. There is significant tenderness of the lumbar facet joints, though his response of the benefit from the fact block is vague and ambiguous. Mild C6-7 radicular deficits are apparent in the left upper extremity, though contribution from pain cannot be excluded with certainty. Similarly, mild deficits along the median and remotely the ulnar nerves cannot be readily excluded. Deep tendon reflexes are nearly symmetrical throughout. Claimant has no insurance coverage for in-patient treatment and the doctor is at a loss to help him. Claimant was advised that as far as work is concerned, he should take it easy and avoid all activities that aggravate his symptoms, in particular repetitive bending and twisting of his neck and low back. Claimant should also refrain from prolonged flexed posture of his cervical spine, if sitting at a computer or television, the terminal should be at his eye level, and he should refrain from prolonged sitting, standing,

walking, stooping, or driving from more than ½ an hour at a time. He should also not lift more than 20 lbs. at the time.

[REDACTED]
[REDACTED] states that the claimant has no medically determinable impairment.

Consultant's notes states that the claimant related that he has significant physical issues, that his dad needs to remind him to take a shower and medications, that he prepares easy food, does not drive due to neck pain, shops once a month and loses money, his attention span is not very long, has trouble with instructions, is paranoid because he cannot do what he used to do, and he is depressed because feels like life has been turned upside down. [REDACTED] of

[REDACTED] is quoted as saying claimant said his depression is stable, and also that he tested positive for marijuana. Conclusion is that the claimant's significant physical issues appear to contribute to psychological issues he may have, and that his statements regarding current limitations are considered partially credible, but the presence of a mental impairment is not found.

Information provided following the hearing includes a June 23, 2008 MRI of claimant's brain which was normal. Also provided was an [REDACTED] [REDACTED] indicating claimant was seen by a neurologist on July 16 and August 5, 2008 to do some electrical studies. Final impression is that of paresthesias (numbness and tingling) for which the neurologist cannot provide a clear neurologic explanation, headaches, paroxysmal movements of sleep, and questionable asthma. Recommended further treatment is none. It is noted that the claimant's exam was neurologically normal, and the MRI scan of his brain was also normal. Neurologist states that he obtained a cervical spine MRI which showed some degenerative changes in the C6 and C7 vertebral segments, but there was no intrinsic or extrinsic

cervical cord pathology. Claimant was then brought back to do electrical studies in his upper extremities, looking for any evidence of carpal tunnel or peripheral neuropathy, and those studies were normal. In short, the neurologist cannot provide an explanation for claimant's complaints. Claimant's cervical spine MRI was reviewed by another doctor because the interpreting radiologist raised the question of possible infection involving the two vertebrae where the degenerative changes were noted, but that doctor felt the changes were degenerative and not infectious.

Neurologist noted that the claimant listed a wide variety of medical problems when seen on July 16, 2008, including numbness in fingers/toes, body tingles if he gets hot, muscle spasms, twitching, urinary incontinence, impotence, muscle aches without exercise, weakness, shortness of breath, muscle pain in legs with walking, wheezing, snoring, diarrhea, heartburn, loss of appetite, itching, dizziness, blurred and double vision, night sweats, anxiety, trouble sleeping, temperature intolerance, and excessive thirst. Claimant's girlfriend who was with him during the exam is one of neurologist's MS patients, but the claimant has no family history of MS. Examination revealed a well developed, well nourished male in no acute distress and no physical abnormalities. Claimant was alert and oriented x3 with no defects in concentration, recent/remote memory or general fund of knowledge. Claimant's motor strength is 100% throughout, bulk and tone are normal, and there is no atrophy or fasciculations noted. Reflexes are generally 2/2 and symmetrical. Sensory exam shows decreased vibratory sense and joint position in feet as well as decreased temperature. Station and gait are normal and tandem walking, heel and toe walking are normal.

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. See Social Security Rulings 85-28, 88-13, and 82-63. Analysis therefore continues.

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, if claimant had not already been denied at Step 2, the Administrative Law Judge concludes that the claimant most likely cannot perform his past relevant work, based on his back issues and medical documentation where he is advised to avoid heavy lifting, twisting, bending, etc. Claimant's past relevant work was as a laborer in a factory and in dry wall delivery, both jobs which would require a good deal of physical exertion. 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 [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).

Medical information shows that the claimant has some degenerative changes in his back that would prevent him from doing heavy physical labor. However, hearing testimony of the claimant and his girlfriend that he is practically incapable of doing anything, is in pain every day, sleeps most of the time, has headaches every day, and that everything must be done for him is not credible. It appears that the claimant is relating symptoms of MS, condition that his girlfriend has. However, the neurological examination finds no basis for claimant's reported multitude of physical problems, despite MRI, electrical studies and examination that shows a well nourished, well developed male in no acute distress. Claimant has provided no evidence of any mental issues even though he claimed during the hearing that he suffers from depression and bi-polar disorder. 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 at least sedentary work. Under the Medical-Vocational guidelines, a younger individual age 18-44 (claimant is 39), who is even illiterate or unable to communicate in English and has an unskilled or no work history who can perform sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.23.

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 claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

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 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 work at least 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: April 12, 2010

Date Mailed: April 13, 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.

cc:

