

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: 2009-28341  
Issue No: 2009  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
August 18, 2009  
Ogemaw 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. Also appearing and testifying on claimant's behalf was his wife.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P)?

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 February 5, 2009, claimant filed an application for Medical Assistance benefits alleging disability.

(2) On April 22, 2009, the Medical Review Team denied claimant's application stating that claimant was capable of past relevant work per 20 CFR 416.920(E).

(3) On April 28, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On May 28, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On July 14, 2009, the State Hearing Review Team (SHRT) also denied claimant's application stating he was capable of performing other work, namely light unskilled work per Vocational Rule 202.17.

(6) Claimant presented additional medical evidence following the hearing that was submitted to SHRT for review. On November 18, 2009, SHRT once again denied the claimant stating he was capable of performing light work.

(7) Claimant is a 27 year-old man whose birth date is [REDACTED]. Claimant is 5'6 1/2" tall and weighs 183 pounds. Claimant attended the 11<sup>th</sup> grade and does not have a GED. Claimant is able to read, write and do basic math.

(8) Claimant states that he last worked in 2007 as a cook in a restaurant for 3-4 months, job from which he was dismissed due to "attitude problems" and because he had medical problems. Claimant was also a cook and worked in construction for 2 years from 2003 to 2006. Claimant has applied for cooking jobs and gas station clerk jobs.

(9) Claimant is living with his wife in a rented duplex, has a driver's license and drives at least once per day to the store, cooks most of the daily meals, grocery shops, does all types of house cleaning, and mows the lawn.

(10) Claimant alleges as disabling impairment kidney stones from bladder issues he was born with.

(11) Claimant has applied for Social Security disability 7 years ago and been denied.

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).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments does not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms)... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3)

the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least

equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).

4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant is not engaged in substantial gainful activity and testified that he has not worked since year 2007. Claimant is not disqualified from receiving disability at Step 1.

At Step 2, claimant has the burden of proof of establishing that he has a severely restrictive physical or mental impairment or a combination of impairments that is “severe”. An impairment or combination of impairments is “severe” within the meaning of the regulations if it significantly limits an individual’s ability to perform basic work activities. An impairment or combination of impairments is “not severe” when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual’s ability to work (20 CFR 404.1521 and 416.921; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p).

The objective medical evidence on the record includes medical records from September, 2006 hospital admission. Claimant was in the hospital for 4 days due to having pneumonia. History of congenital bladder atrophy was noted. At discharge claimant’s final diagnosis was that of pneumonia, urinary tract infection, and hematuria, suspect secondary to trauma, secondary to self-catheterization.

Health Examination of [REDACTED] quotes the claimant as saying he is not able to work due to multiple bouts of kidney stones. These have been within the last three or four

months, claimant had passed several stones and brought them with him to the exam. Stones appear to be anywhere from 30-50 small one. Claimant also stated he has frequent bouts of gross blood in the urine and frequent urinary tract infections, but he has not had any recent treatments due to lack of employment and money to spend on medications and physicians. Claimant reported having bladder problems since he was a child, that he has spent a considerable amount of time at [REDACTED] in [REDACTED] and also had follow ups as an adult at the University of Michigan, with most recent visit being in 200 or 2001 due to financial reasons.

Claimant was not taking any prescribed medications and did not have a family doctor. Claimant reported smoking and drinking alcohol occasionally. Physical examination describes the claimant as a very muscular young man with a body build that suggests he has done some weight lifting in the past, something claimant denied. Claimant self-catherizes and apparently has frequent urinary tract infections that he does not see a physician for. Examiner could not find any other physical abnormalities on this examination. It is noted that the claimant stated in his hearing request that this examiner never examined him, only asked about ten questions, looked at his stones and dismissed him.

Additional information submitted following the hearing includes emergency department record of [REDACTED] when the claimant was seen due to a swollen testicle relating to an injury of 2 days prior. Sonic scan of claimant's scrotum revealed normal sonic appearance of both testes and normal blood flow bilaterally and moderately large accumulation of watery liquid in the left scrotum.

Claimant was seen for scrotal abscess on [REDACTED]. It is noted that the claimant has been catheterizing for 14 years without problems, but then developed swelling and tenderness in his left hemiscrotum. After course of antibiotics, pus drained spontaneously and is much better now. Claimant is otherwise catheterizing well and has no fever or chills. Claimant smokes a

half pack per day of cigarettes and has six to ten beers a week. Physical examination revealed a healthy young man. Overall impression and plan was to place the claimant on antibiotics for additional two weeks and then perform another exam.

Claimant was again seen on [REDACTED] and it was noted that the swelling and tenderness of his scrotum is markedly improved. Claimant was looking well.

There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical impairment. Claimant's bouts with kidney stones come and go according to his own hearing testimony and that of his wife. Claimant also testified that he takes no medications, and that his pain comes and goes so he uses Ibuprofen if needed. No medical evidence has been provided to show that the claimant has been repeatedly treated/hospitalized for his condition. Even though the claimant does not have insurance or funds to pay for medical treatment, he would not be refused such treatment if he had a medical emergency and came to an emergency room, like he did in 2006. Claimant is described as healthy both by the examiner he states did not examine him and by a doctor he saw in June and July, 2009. 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 and claimant reported none. 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 was as a cook and in construction. There is no indication that construction work would be too strenuous for the claimant, but even if that was so, he could perform as a cook again. 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. 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 and light work, and possibly medium work. Under the Medical-Vocational guidelines, a younger individual age 18-44 (claimant is 27), with limited

education and an unskilled work history who can perform light work is not considered disabled pursuant to Medical-Vocational Rule 202.17.

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.

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 benefits. The claimant should be able to perform a wide range of 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: February 10, 2010

Date Mailed: February 23, 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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