

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: 2009-28735  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
August 19, 2009  
Calhoun 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 19, 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 February 13, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On April 8, 2009, the Medical Review Team denied claimant's application stating that the claimant had a non-exertional impairment and could perform unskilled work.

(3) On April 8, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On June 3, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On July 22, 2009, the State Hearing Review Team (SHRT) also denied claimant's application stating the claimant had a non-severe impairment/condition per 20 CFR 416.920(c).

(6) Claimant submitted additional medical information following the hearing that was forwarded to SHRT for review. On September 1, 2009, SHRT once again determined that the claimant was not disabled as he was capable of performing other work, namely medium unskilled work per 20 CFR 416.968(a) and Vocation Rule 203.28.

(7) Claimant is a 48 year-old man who is 6' tall and weighs 220 pounds. Claimant has completed high school and has an industrial electronics certificate. Claimant was in the military service for 14 years, active service from 1981 to 1989 and then in reserves from 1989 to 1995.

(8) Claimant last worked in his mother's clothing store as a clerk for 9 months in 2003. Claimant also ran a printing machine for 1 year in 1999. Claimant received SSI from 2003 to 2006 until he went to prison for 3 years. Claimant was released from prison in February, 2009 and reapplied for SSI but was denied, and is appealing this denial.

(9) Claimant is currently homeless staying in a truck and on friend's couch, and receives food stamps. Claimant is eligible for VA disability of 20 percent which he does not

currently receive. Claimant has a driver's license and drives every day to therapy for injections, pool exercises, etc.

(10) Claimant alleges as disabling impairments: degenerative disc disease, sinus infections, depression, skin condition, and trigger point finger.

### 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 2003. 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 September, 2005 neurological exam quoting the claimant as saying his problems began in 1984 when he was involved in a motor vehicle accident. At that time the claimant states he developed pain in the left scapular region and was taken to a hospital emergency room, but no x-rays of his back or neck were performed and he was discharged without hospitalization. Claimant however states since that time his pain in the left subscapular region has been constant. The pain will at times radiate to the upper thoracic and lower cervical region, and is brought on by head turning or raising the left arm or lifting. Claimant was alert, cooperative, and oriented to time, place and person. All cranial nerve function was intact and the gait and station were normal. All muscle groups exhibited normal strength, tone and coordination were intact, reflexes were symmetric, and sensory examination was intact. Diagnosis was no clinical evidence of radiculopathy. A subsequent EMG and nerve conduction studies of upper extremities revealed no evidence of radiculopathy. Findings were consistent with bilateral carpal tunnel syndrome, moderate on the right and mild on the left.

Spine exam of September, 2005 states that the claimant has degenerative disc disease of the cervical spine involving C3-C4, C4-C5, and C5-C6 discs. Claimant’s major functional

impairment was pain at that time. Claimant's muscle strength was 5/5 and no neck bone issues were appreciated.

[REDACTED], hospital report indicates that the claimant has bright red bloody stool and left testicular pain. Claimant had just got out of jail on this date after 5 months. Physical examination indicates that no pain could be elicited in the testicles. Claimant had external hemorrhoids with bleeding, but no reason for the testicular pain could be found. Claimant's examination areas were otherwise normal with muscle strength and pulses strong and equal, straight leg raising negative, and cranial nerves intact.

[REDACTED], VA Medical Center rehabilitation consult note states that the claimant was seen as unscheduled walk in for injury to his right long finger in 2002 when he was cutting a tree branch. The branch broke and the sharp end cut the nail and tip end of claimant's right long finger. Finger remains highly sensitive if he bumps it and he has been given a rigid splint to protect it in the past, but that does not allow him to functionally use the finger. Claimant was fitted with a medium digit extensor tube, he trialed it and found it to be very comfortable, and when he bumped the end of the finger it did not elicit pain.

Psychological-Clinical Evaluation of [REDACTED], indicates that the claimant was upset with the way he had been treated by the government over the past 2-3 years, and this was all in reference to his being sent to prison. Claimant was oriented in all three spheres, was alert and cooperative, and had good attitude throughout the three-hour interview. Claimant also showed evidence of good personal hygiene care and was dressed in fairly new street clothing. Claimant's speech was considered to be normal, logical, and coherent. Claimant is not considered to be at risk for homicidal or suicidal behavior, and there was no evidence of any psychotic disorder. Mental Residual Functional Capacity Assessment endorsements which fall

within the “moderately limited” and “markedly limited” areas are primarily the result of the claimant’s physical restrictions related to his degenerative disc disease, with limited range of motion in the left shoulder/upper arm, and keloids under his right arm and testicle/groin areas. Diagnostic impression is that of mood disorder due to a general medical condition. Current GAF is 50. Recommendations are that the claimant be placed on antidepressants as he is currently not being prescribed any, and that it would not appear that he is able or motivated for any type of employment at this time, due to his stated need for further surgical repair of his condition.

Claimant met with a psychotherapist from VA in April, 2009 due to a referral for depression and anger problems. Claimant was recently released from jail and currently living with grandmother and frustrated because he can not find employment with felony charge. Claimant was seen for the second time on [REDACTED] and reported feeling somewhat less depressed. He continues to struggle with finding employment and states that with his felony conviction he will not even be considered. On [REDACTED], claimant was seen again and reported continuing to feel anger and frustration. Claimant reported that his mother and a crooked federal agent had taken his monies he was receiving from VA while he was incarcerated, which apparently lead to suspension of such benefits to repay the overissuance.

Claimant had keloids removed from his groin in April, 2009 and from his neck due to scarring from previous keloid removal in July, 2009.

[REDACTED], cervical spine x-ray shows degenerative changes in the mid to lower cervical spine with spur formation with narrowing of disc spaces and neural foramina, but with no evidence of fracture or dislocation. Soft tissue and air passages in the neck appear normal.

[REDACTED] evaluations report of [REDACTED], for Disability Determination for Social Security Administration quotes the claimant as stating he has a history of neck and

back pain with spinal stenosis, history of left shoulder pain with scapular nerve impingement and trigger points, history of migraines, carpal tunnel syndrome, and internal bleeding. On examination claimant had normal gait and did not use an assistive device for ambulation. Peripheral pulses were easily palpated and symmetric and claimant had no difficulty getting on and off the examination table, with heel-toe walking, or with squatting. There was cervical spine muscular spasm, but no significant holding of the head to one side. Neurologically claimant's reflexes are present and symmetric in all extremities, straight leg raising test is negative bilaterally, and there is no disorientation noted. Evaluation conclusion is that claimant has decreased cervical spine flexion and muscular spasms, but no sensory deficits in the extremities. Shoulder examination is unremarkable. There is some decreased strength in the right 3<sup>rd</sup> digit, which the claimant attributes to prior injury of the 3<sup>rd</sup> digit itself, however the right hand maintains full dexterity. There is no focal neurologic deficit appreciated of the cranial nerves. Abdominal exam is unremarkable.

██████████, x-rays of claimant's shoulder show mild degenerative changes in the AC joint, but no evidence for fracture or dislocation.

On ██████████, claimant was seen for pain in his neck that he has had for years following a car accident in 1983. Claimant has received numerous injections, physical therapy and pain medication for the past 26 years. Claimant does pool therapy 3 times per week for 2 months to one year now, and it helps quite a bit. Impression was that of normal appearance of the cervical cord and spinal canal with disc herniation at C5-6.

There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical impairment. 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. 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 claimant's work history too minimal to form a conclusion that he could do his past relevant work.

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 medium 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, light and medium work. Under the Medical-Vocational guidelines, a younger individual age 45-49 (claimant is 48 years of age), with limited education (claimant completed high school and has an industrial electronics certificate) and an unskilled or no work history who can perform even only sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.18. Claimant is capable of performing more than sedentary work.

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 light, sedentary and medium 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: December 1, 2009

Date Mailed: December 11, 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]