

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: 2009-30029
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 25, 2009
Muskegon 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 25, 2009. Claimant personally appeared and testified. Also appearing and testifying on claimant's behalf was his friends [REDACTED] and [REDACTED]. and his mother [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 January 7, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On March 9, 2009, the Medical Review Team (MRT) denied claimant's application stating that claimant could perform other work.

(3) On March 12, 2009, the department caseworker sent claimant notice that his application was denied.

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

(5) On July 31, 2009, the State Hearing Review Team (SHRT) also denied claimant's application stating he was capable of performing other work, namely medium unskilled work per Vocational Rule 203.28. SHRT decision also stated that Drug and Alcohol Abuse is material per 20 CFR 416.935.

(6) Claimant was to provide additional medical information following the hearing, and record was extended for 90 days in order for him to do so. On February 2, 2010 local county office advised that the claimant had sent a CD of an apparent MRI on August 27, 2009 that was forwarded to MRT, but they are not set up to view records on CD. MRT noted that there is no change in their decision of March 9, 2009.

(7) Claimant was asked to provide a narrative of the CD MRI for review and stated to the local office that he could try and get it from the hospital. As of March 29, 2010 claimant had not provided anything additional, and record was closed on this date.

(8) Claimant is a 48 year old man whose birthday is [REDACTED]. Claimant is 5' 10 1/2 " tall and weighs 190 lbs. Claimant completed 11th grade but has no GED, can read and write, and do some basic math.

(9) Claimant states that he last worked in year 2001 as a hoist operator in a factory for 3 years, until the business shut down. Claimant had also done auto repair for 4 years, jobs he was laid off from.

(10) Claimant lives in his mother's trailer and has been supported by his mother and girlfriend since 2001. Claimant has no driver's license due to having DUI in late 1980's. Claimant smokes a pack of cigarettes per day, drinks a 12-pack of beer per month, and uses no drugs.

(11) Claimant alleges as disabling impairments degenerative disc disease.

(12) 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 year 2001. Claimant is not disqualified from receiving disability at Step 1.

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

The objective medical evidence on the record includes [REDACTED] [REDACTED] stating that claimant can lift and/or carry 50 pounds occasionally, 25 pounds frequently, stand and/or walk with normal breaks about 6 hours in an 8-hour workday, and sit about 6 hours. Claimant has no limit in pushing and/or pulling, including operation of hand and/or foot controls. Claimant can frequently climb ramp/stairs, balance occasionally, stoop, kneel, crouch, and crawl. Claimant is limited in gross manipulation and fine manipulation. No visual, communicative or environmental limitations are noted. Additional comments are that even though the claimant alleges he cannot do much of anything, cannot feel the steering wheel when driving (claimant stated he has no driver’s license at the hearing), is in pain all the time and his hands are numb all

the time, his allegations are only partially credible. Even with the level of symptoms claimant alleges, he has not sought any regular treatment, and only mild degenerative disc disease was noted on x-rays.

Claimant was in the emergency room on September 11, 2008 after working on a car and wrenching his back. Claimant complained of right-sided low back pain and stated he has a history of chronic back pain for several years. Review of systems was negative. Claimant did have pain for which he jumps when the doctor palpates the right paraspinal muscles. There were palpable spasms. No malalignment was discovered in claimant's spine after x-rays of his lumbar spine were reviewed. Assessment was that of acute exacerbation of chronic back pain with spasm and reported radiculopathy. Claimant was given [REDACTED] and [REDACTED] and a prescription for [REDACTED], [REDACTED] and [REDACTED], and discharged home in stable condition.

A December 8, 2008 MRI of claimant's lumbar spine showed no evidence of discitis. The plain radiographic findings at L1-L2 are due to mild degenerative disc disease. There is moderate disc bulge at L3-L4. There is no spinal stenosis or radiculopathy.

Claimant was seen by a family doctor on January 2, 2009 with complaint of back pain with radiation. Claimant stated he has had this pain for the last 10 years, but now is to the point where he can hardly get out of bed some days. Claimant had decreased range of motion and leg pain, and paresthesias and weakness in extremities. Claimant was in no acute distress, and was oriented to time, place and person. Claimant had 5/5 normal muscle strength in left and right lower extremity, and normal reflexes. Claimant had normal gait and station. While paraspinal muscles were tender, there were no spasms. Assessment was that of degeneration of lumbar or lumbosacral intervertebral disc and sciatica. Claimant was given Lyrica for pain and Flexeril.

April 16, 2009 letter from an MD states that the claimant has “severe lumbar disc disease”, has had multiple injuries and is no longer able to work.

There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment. Claimant does have back issues, but his MRI does not show any significant degenerative disc disease. It is noted that the claimant was working on a car in September, 2008 and wrenched his back, and this is what landed him in the emergency room with back pain. Claimant testified that he did auto repair for 4 years in the past, and it is questionable as to what kind of other strenuous activities he may be engaging in that cause him back pain. Having said this, the Administrative Law Judge emphasizes that her finding is based on the MRI and not on possibilities that the claimant does physical things that hurt his back. Claimant’s doctor states that the claimant has severe lumbar disc disease, but the MRI does not support this finding. Claimant has therefore not met his burden of proof at Step 2 and could be denied at this Step.

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 conclude that the claimant cannot perform past relevant work, as he testified that

such work was as a hoist operator and doing auto repairs. Claimant apparently suffers from back pain when he engages in this type of work, as evidenced by his emergency room visit. Finding that the claimant is unable to perform work which he has engaged in in the past could 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 *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls....

20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

Claimant has submitted insufficient objective medical evidence that he is physically unable to do at least light work if demanded of him. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity to perform other work. Claimant is disqualified from receiving disability at Step 5 based upon the fact that he has not established by objective medical evidence that he cannot perform sedentary and light work, or possibly even medium work. Under the Medical-Vocational guidelines, a younger individual age 45-49 (claimant is age 48), with limited education 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.

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 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.

It is noted that claimant's friends testified that his right hip goes out, he cannot get out of his chair, he has had problems for a long time, and he had been seen in serious pain. Claimant's mother also testified that the claimant is really hurting, cannot get out of bed, and cannot do a lot of things. While the Administrative Law Judge does not disregard this testimony, it must be supported with objective medical records that show the level of severity of the impairment described by the testimony.

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: 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:

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