

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: 2009-32696
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 23, 2009
Ingham 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 September 23, 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 retroactive MA?

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 May 29, 2009, claimant filed an application for Medical Assistance benefits alleging disability.

(2) On June 11, 2009, the Medical Review Team denied claimant's application stating that claimant's impairment lacks duration of 12 months per 20 CFR 416.909.

(3) On June 27, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On July 6, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On August 26, 2009, the State Hearing Review Team again denied claimant's application stating he was capable of performing light unskilled work with left overhead reaching restricted, and cited Vocational Rule 202.20.

(6) Claimant was to provide additional medical information and the record was extended for him to do so. Claimant has not provided any such information to the county according to the e-mail of January 20, 2010, and the record was closed.

(7) Claimant is a 40 year old man whose birth date is January 7, 1970. Claimant is 5' 8" tall and weighs 150 pounds. Claimant has a GED. Claimant can read, write and do basic math.

(8) Claimant states that he last worked in September, 2008 as a line worker in a factory sanding doors and driving a fork lift, job he held since November, 2007. This job ended due to the claimant having stomach problems and not returning to work after an accident at work, resulting in a firing. Claimant testified that he is a recovering addict due to alcohol and drug abuse, has had sporadic job history, and has also been in jail and prison, being released from probation in 2007.

(9) Claimant currently lives with his mother and receives food stamps. Claimant does not have a driver's license as it was suspended due to back child support, DUI's, and driving without a license.

(10) Claimant alleges as disabling impairments: left shoulder injury, diverticulitis, feet problems as he has no arch, and problems related to surgical removal of part of his intestines, hernia and appendix.

(11) Claimant has applied for Social Security disability and been denied, but has appealed the denial and re-applied on September 22, 009.

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 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 consists of a hospital admission of September 12, 2008 for claimant's complaint of abdominal pain that he has never had in the past. Claimant's examination areas were normal except for diffuse tenderness to palpation most being in the left lower quadrant of abdomen. Claimant was diagnosed with diverticulitis.

Claimant was admitted to the hospital on November 21, 2008 and discharged on November 26, 2008. Discharge Summary indicates that the claimant's diagnosis was that of acute diverticulitis for which he underwent colon resection with colostomy for perforated diverticulitis. Claimant reported the hospital admission of September 12, 2008 and that he was given antibiotic prescription, but he could not fill it due to lack of insurance and money. It was noted that the claimant also had a gunshot wound to the neck/shoulder area when he was 16 years old.

Medical Examination Report of January 8, 2009 indicates that the claimant is released from surgeon's care until further surgery, and that his incision is clean, dry and healing well. Medical Needs form completed on the same date indicates that the claimant will be seen in March, 2009 for coloscopy and possible reversal of his colostomy.

Physical Residual Functional Capacity Assessment of April 14, 2009 indicates as claimant's primary diagnosis diverticulitis and as secondary gun shot wound. Claimant can occasionally lift and/or carry up to 20 pounds, frequently lift and/or carry 10 pounds, stand about 6 hours in an 8-hour workday, and sit the same amount of time. Evidence that supports these conclusions is September, 2008 history of diverticulitis with partial colon resection, back to baseline weight of 165 pounds, and some numbness as a result of a gunshot wound to 3rd, 4th and

5th fingers of non-dominant hand. March, 2009 heent is unremarkable, claimant's left shoulder is painful and drops downward compared to the right shoulder. Claimant can frequently climb, balance, kneel, crouch and crawl, but can only occasionally stoop. Claimant cannot do any overhead lifting with his left hand, and can do frequent but not continuous handling/fingering with left hand.

Physical exam requested by [REDACTED] for Social Security Administration performed on [REDACTED] [REDACTED] states as claimant's chief complaints left shoulder injury, diverticulitis, problems and problems with his feet, namely plantar fasciitis. Claimant related that he was playing with a shot gun when he was younger and the gun fired, hitting him in the left shoulder. Claimant still has shrapnel in the left clavicular region, and is reluctant to use the left non dominant hand because of intense pain when he moves the hand away from his side. Claimant has numbness in the left 3rd, 4th and 5th fingers. Claimant also reported having a colon resection and colostomy placed in autumn, 2008, he initially lost weight, dropping to 145 lbs. but has now gained weight and is back to his baseline weight of 165 lbs. Claimant stated that he has pain in the abdomen sometimes but it is random, and was scheduled for a colonoscopy to see if he has ulcerative colitis or Crohn's disease accounting for his acute presentation of sepsis and abdominal obstruction.

Claimant had no masses or organomegaly and no pain to percussion. There was a colostomy bag in the left quadrant of the abdomen. Claimant's left shoulder was painful and he had positive shoulder impingement tests. Claimant's left shoulder drops downwards compared to the right shoulder, and push off from the wall notes weakness in the rhomboid muscles bilaterally. Claimant had no atrophy, no muscle spasm, manual muscle testing was normal except the scapular muscles bilaterally, and he had diminished light touch in the left 3rd, 4th and

5th fingers in the nerve distribution. Claimant's range of motion was normal to all areas except the left shoulder, which was decreased. Conclusion is that the claimant's left arm is limited in overhead lifting and he uses it best at waist level. Colon resection with a colostomy in place is noted.

Medical evidence has clearly 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. For these reasons, this Administrative Law Judge finds that claimant has met his burden of proof at Step 2.

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, the Administrative Law Judge would have to deny the claimant based upon his ability to perform past relevant work. Claimant's past relevant work was doing light factory work such as sanding doors and driving a fork lift. Claimant performed this job for over a year with his left shoulder issues, and only ended it when he developed stomach problems. Claimant's April 1, 2009 medical exam does not reveal that he is having abdominal problems, and his weight is back to normal. Claimant failed to provide any additional medical evidence since April, 2009 to show what his continued medical condition is. 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 [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).

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 sedentary and light work if demanded of him. April, 2009 Physical Residual Functional Capacity Assessment supports this conclusion. 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. Under the Medical-Vocational guidelines, a younger individual age 18-44 (claimant is 40), with limited education and an unskilled or no work history who can perform only sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.24.

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 and retroactive Medical Assistance benefits. The claimant should be able to perform a wide range of sedentary and light work even with his alleged impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED, and it is SO ORDERED.

/s/ _____
Ivona Rairigh
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 19, 2010

Date Mailed: April 19, 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.

2009-32696/IR

cc:

