

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: 2009-33448
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 29, 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 29, 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 June 16, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

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

(3) On July 16, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On July 21, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On September 1, 2009, the State Hearing Review Team (SHRT) also denied claimant's application stating he was capable of performing other work, namely light work per 20 CFR 416.967(b) and Vocational Rule 202.20.

(6) Claimant submitted additional medical information following the hearing that was forwarded to SHRT for review. On January 28, 2010, SHRT once again determined that the claimant could perform light work and was not disabled.

(7) Claimant is a 49 year-old man whose birth date is [REDACTED]. Claimant is 6' tall and weighs 155 pounds. Claimant has a GED and can read, write and do basic math.

(8) Claimant states that he last worked one year ago doing mechanical work on cars, but was in an argument with the owner and lost that job. Claimant also worked about 4-6 years ago driving a truck. Claimant currently stays in empty houses owned by his parents and does odd jobs around his parents' rentals.

(9) Claimant does not have a driver's license due to DUI offenses and lots of tickets, and has not had one for about 7-8 years. Claimant rides dirt bikes and works on cars as a hobby.

(10) Claimant alleges as disabling impairments arthritis, depression, cirrhosis of the liver stage IV, and Hepatitis C.

(11) Claimant has applied for SSI and been denied, and has an attorney 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 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 a year ago, but does odd jobs for his parents' rentals. 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 Psychiatric/Psychological Medical Report of [REDACTED], authorized by Disability Determination Service. Claimant alleges disability due to depression, anxiety attacks, cirrhosis, Hepatitis C and anemia. Claimant reported that he first became depressed at the age of 42, but received 1st treatment for depression in December, 2008 while in jail, where he was put on Prozac. Claimant stated his current difficulties include getting asleep, appetite fluctuation and losing weight, fatigue, concentration, memory and loss of interest in life activities. Claimant denied ever making a suicide attempt and denied suicidal intent on the day of this assessment, and also denied ever having serious suicidal thoughts.

Claimant further stated that he has had panic attacks for 2 years, but they pretty much stopped with the Wellbutrin and stopping the alcohol. Claimant described his panic attacks as lasting 2-3 hours until he got drunk enough to make them go away. Claimant stated he quit using alcohol in December, 2008 when he was drunk, argued with the neighbor, police came and he was arrested for child support nonpayment, disorderly conduct and probation violation.

Claimant's medications were Trazodone, Atarax, Naproxen and Wellbutrin. Claimant had never been hospitalized in a psychiatric unit, but has been in a residential rehab center couple of years ago. Claimant was living with his girlfriend and socialized with "nondrinking people".

Claimant was driven to the appointment by his girlfriend and was cooperative, verbal, and friendly. His clothing was neat and clean, his hygiene and grooming fair, and he had soiled hands and fingernails. Claimant appeared to have good contact with reality, his speed of motor activity was normal, he was pleasant, and reported being dependent on others for some of his basic needs. Claimant was logical and organized in response to examiner's questions, denied having hallucinations or delusions, but reported having pain, problems with sleep, difficulties with appetite, fatigue and weakness.

Examiner believes from a psychological point of view that the claimant could understand and follow simple instructions and could perform simple routine tasks, and that his psychological functioning has improved considerably since he stopped consuming alcohol. Claimant was diagnosed with major depression, single episode, moderate, anxiety disorder, alcohol dependence in early full remission per claimant's report, and nicotine dependence. Claimant's current GAF is 54, and his prognosis was guarded with expected continued improvement with regard to depression and anxiety if he is able to abstain from any further use of alcohol.

August 28, 2009, laboratory report indicates claimant's bilirubin level is 1.0. CT of claimant's abdomen and pelvis of August 31, 2009, indicates that his liver is abnormal in contour with findings consistent with cirrhosis. Claimant's spleen is not enlarged, his pancreas is unremarkable, and there is no significant renal abnormality. Impression is that of cirrhosis with varices.

[REDACTED], Ingham County Health Department letter from a D.O. states that the claimant has been under their care since [REDACTED], and his diagnosis include Chronic Hepatitis C with a stage 4 cirrhosis per liver biopsy of April, 2009. Due to claimant's late stage presentation he has multiple symptoms which include nausea with vomiting, weight loss, severe

fatigue, depression/anxiety, and body aches. Claimant's recent CT scan shows esophageal varices which are caused by portal hypertension. This result confirms an early decompensating clinical picture. Doctor states that it is unlikely that the claimant will sustain gainful employment due to his failing health.

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. This Administrative Law Judge finds that the medical record is sufficient to establish that claimant has a severely restrictive physical impairment that is expected to last 12 months or more, and he has met his burden of proof at Step 2.

The analysis proceeds 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 support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment, namely that of 5.05. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, claimant can be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d). No further analysis is needed and the claimant is 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 meets the definition of disabled under the MA-P program and because the evidence of record does 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 also.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly denied claimant's MA and SDA application.

Accordingly, department's action is REVERSED. Department shall:

1. Process claimant's disputed MA and SDA June 16, 2009 application.
2. Obtain any additional information/verification needed to complete MA and SDA eligibility determination, by asking for such items in writing and within time limits in accordance with departmental policy.
3. If the claimant meets all financial and non-financial criteria, grant him all of the MA and SDA benefits he is eligible for, based on June 16, 2009 application.
4. Notify the claimant of department's decision in writing.
5. Review claimant's continuing eligibility in April, 2011, at which time updated medical records are to be obtained.

SO ORDERED.

/s/

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

Date Signed: March 17, 2010

Date Mailed: March 17, 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.

IR [REDACTED]

cc: [REDACTED]