

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: 2009-5090

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 17, 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 March 17, 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 9, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On September 16, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On September 29, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On October 30, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On December 5, 2008, the State Hearing Review Team (SHRT) again denied claimant's application stating impairment lacks duration per 20 CFR 416.909.

(6) Claimant submitted additional medical evidence following the hearing. This evidence was forwarded to SHRT for additional review.

(7) On April 6, 2009, SHRT once again denied claimant's application stating that he is capable of performing other work, namely medium unskilled work, per 20 CFR 416.967(c) and 20 CFR 416.968(a), Vocational Rule 203.25.

(8) Claimant is a 33 year-old man whose birth date is [REDACTED] Claimant is 5' 11" tall and weighs 219 pounds after losing 80 pounds since last winter due to his nerves being "shot" and losing appetite. Claimant attended the 11th grade and does not have a GED. Claimant testified that he can't read or write, can do some basic math, and has been in special education classes all throughout school.

(9) Claimant states that he last worked 4 years ago roofing, working for others since the age of 13, but had to stop because his body cannot handle the work, and that he cannot do any job as he is in pain every morning. Claimant lives with his father, sisters or friends, and his family helps support him.

(10) Claimant does not have a driver's license due to old traffic fines and impaired driving. Claimant states he quit drinking two years ago because of the medications he is on.

(11) Claimant alleges as disabling impairments: nerve damage to the right hand and foot, degenerative disc disease, and learning disability.

CONCLUSIONS OF LAWThe 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 in 4 years. 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 that has lasted or is expected to last for duration of at least 12 months.

History and Physical Report #2 from [REDACTED] visit of June 11, 2008, states that the claimant is there to establish as a new patient, and that his complaints are of neck and back pain. Claimant reported being homeless and moving around a lot, that he has a history of hypertension since 2006 and was given medications for it but never took them due to lack of insurance. Claimant further reported falling off a horse as a young teen and having subsequent pain but no medical attention. Claimant had not been seen by orthopedics, but has gone for chiropractic care, and was not currently on any medications. Claimant was requesting x-rays of neck and lumbar spine to submit reports to DHS offices. Claimant's motor strength was 5/5

normal muscle strength in both left and right leg, and he had 4/5 reduced muscle strength, decreased grip strength and flexion/extension of forearm. Claimant's reflexes were normal in both Achilles and knees. Claimant had normal gait and station, no deformities were seen in claimant's spine, and no muscle spasms were noted (Department's Exhibit I, pages 3 and 4).

Medical Examination Report completed on [REDACTED], following the exam of [REDACTED] indicates that claimant's condition is stable, he is limited to lifting up to 20 pounds occasionally and less than 10 pounds frequently, he can stand and/or walk at least 2 hours and sit less than 6 hours in an 8-hour workday, and no assistive devices are required for ambulation. Claimant has no limitations in using his hands/arms for repetitive actions and no mental limitations (Department's Exhibit I, pages 8 and 9).

The objective medical evidence on the record includes a Medical Examination Report completed on [REDACTED] for the same date of examination. Current diagnosis for the claimant is that of possible right C-6 radiculitis, S-1 radiculitis, hypertension, and illicit drug use. All of claimant's examination areas are marked as normal except the neuro area. Clinical impression was that the claimant's condition was improving, he was currently limited to lifting up to 20 pounds frequently, 25 pounds occasionally, standing and/or walking at least 2 hours and sitting less than 6 hours in an 8 hour workday. Claimant had no limitations in use of his hands, arms or feet/legs for operating foot/leg controls. Claimant had mental limitations in reading/writing area, and this observation was based on his completion of history questionnaire (Department's Exhibit I, pages 23 and 24).

Additional narration provided with the Medical Examination Report quotes the claimant as complaining of neck and back problems, with neck problem becoming more painful and constant six months ago, with numbness of the first three digits of the right hand and his head tipping up to the right for weeks. Claimant visited the chiropractor about ten times and feels his

neck problem has improved, but he still has numbness and some neck pain. Claimant was using three or four Vicodin and two Tramadol a day, all bought illicitly on the street. Claimant was also getting chiropractic treatment for low back pain that caused some numbness of the right foot. Claimant smoked one pack per day and drank between zero and greater than twelve alcohol portions per day depending on what he could afford. Claimant weight was 214 pounds, blood pressure 134/75, had 20/20 vision, his hands were free of atrophy, swelling, deformity, fine and gross dexterity was intact, and sensory was altered over the first three digits on the right hand. There was no abnormality of color, temperature, or moisture. Claimant's effort on grip testing and wrist strength was inconsistent, as he initially provided only 4/5 strength on wrist flexion and extension but later with encouragement improved considerably at 4++/5. The hand grip on the right or dominant side was initially 59 pounds and later 47 pounds, a significant indication of inconsistency. The left hand grip was 126 pounds. Claimant's neck was straight and range of motion full in all directions. The reflexes at the biceps, triceps, brachioradialis, and Hoffman's were all normal. Claimant's lower back appeared normal, no tenderness was found, he had some lumbar discomfort, gait was normal, and he was able to walk heel to toe without unsteadiness and had good strength walking on heels and toes as well as squatting and recovering. Impressions were that of neck pain and radiculitis was suspected at right C6 level, low back pain with minimal findings at this time, hypertension currently controlled, and illicit use of narcotics (Department's Exhibit I, pages 21 and 22).

Additional medical records for the claimant provided following the hearing include an MRI of his lumbar spine of November 17, 2008, showing mild degenerative changes with a shallow herniation of the L1-L2 disc protruding posteriorly and slightly toward the left. MRI of claimant's cervical spine of November 17, 2008, shows moderate spinal canal stenosis at C5-C6 and mild spinal canal stenosis at C6-C7.

Claimant's hearing testimony is that he is in constant pain, that he sometimes needs help from family members to dress, that he can sit for less than 2 hours, stand for about 20 minutes, and walk for about 15 minutes. Claimant's medical records do not support his testimony of greatly reduced physical ability to function and are insufficient to establish that the claimant has a severely restrictive physical impairment.

Claimant also stated he has a learning disability and memory problems. A Psychological Evaluation of [REDACTED] based on a referral by DHS indicates that the psychologist conducted a Clinical Diagnostic Interview using the format of the Michigan Disability Determination Service, and also administered the Wechsler Adult Intelligence Scale – Third Edition (WAIS – III) (Department's Exhibit I, pages 25 to 30). Claimant complained of problems with his back since he was fourteen years old and fell off a horse, and that he has pain in his lower back and neck daily and constantly. Claimant stated to relieve his pain he has been drinking alcohol almost daily whenever it is available, which turns out to be three to four days a week, and drinks seventeen cans of beer a day when he does drink. Claimant stated that for the past six months he has been drinking frequently to help ease his pain. Claimant does not have a family doctor but was going to a chiropractor up until two months ago. Claimant denied any history of psychiatric treatment, but had gone for substance abuse treatment four years ago and had no treatment since.

Claimant was 6' tall and 215 pounds, ambulatory, on time for his appointment having been brought by his sister, there were no posture or gait problems noted, and his appearance was good. Claimant was in contact with reality, appeared to be relaxed, and there were no significant motor movement problems noted. Claimant was oriented, alert and nonspontaneous, his speech was clear, coherent, and fluent, and his thought processes were relevant, logical, connected, and concrete. Claimant denied delusions, hallucinations, or obsessions, but did complain of having

blackouts and paranoid and persecutory thoughts towards people in general. Claimant also complained of feeling hopeless and worthless, and that he has had thoughts of suicide with no intentions or plans of hurting himself or anyone else. Claimant denied any suicide attempts or any homicidal thoughts. Claimant also complained of being depressed for the past four years, but he does not know what caused the depression.

Claimant had a Verbal IQ of 73, a Performance IQ of 73, and a Full Scale IQ of 70, placing him in the Borderline Level of Intellectual functioning. Claimant was diagnosed with Major Depressive Disorder, single episode, moderate, secondary to physical complaints, alcohol abuse, nicotine and caffeine abuse, and Global Assessment of Functioning Scale of 50. Claimant's prognosis is that he may be able to function in a very simple work situation that does not involve extensive physical exertion, walking, or standing.

This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has 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 medical evidence of claimant's condition does not give rise to a finding that he would meet a statutory listing in the code of federal regulations.

At Step 4, if claimant had not already been denied at Step 2, the Administrative Law Judge would conclude that the claimant is most likely not able to perform past relevant work. Claimant's past relevant work was doing roofing and medical information does indicate that he has mild degenerative changes in both his lumbar and cervical spine. Therefore, roofing job requiring climbing and lifting heavy objects would likely not be advisable for the claimant.

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 unable to do at least light work if demanded of him, and possibly medium work, as the evidence shows he can lift up to 25 pounds occasionally. 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, and possibly medium work. Claimant is 33 years old. Under the Medical-Vocational guidelines, a younger individual age 18-44, even if illiterate or unable to communicate in English and with only unskilled or no work history, which can perform even only sedentary work is not considered disabled pursuant to Medical-Vocational Rule 20201.23.

It is noted that claimant's psychological evaluation does indicate that he has mental limitations. However, such limitations would not prevent the claimant from holding simple unskilled jobs that do not involve extensive physical exertion.

It is also noted that while the claimant testified at the hearing that he quit drinking 2 years ago, the psychologist who saw the claimant in August, 2008 quotes him as saying he drinks

alcohol almost daily whenever it is available, and drinks seventeen cans of beer a day when he does drink. A possibility exists that claimant's personal circumstances (i.e. no permanent residence, inability to obtain employment, etc.) are caused in part by his alcohol abuse in addition to his claimed physical problems. Therefore, even if the claimant met the disability criteria, his alcohol use would have to be considered. The Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) is material to a person's disability and when benefits will or will not be approved. The regulations require the disability analysis be completed prior to a determination of whether a person's drug and alcohol use is material. It is only when a person meets the disability criterion, as set forth in the regulations, that the issue of materiality becomes relevant. In such cases, the regulations require a sixth step to determine the materiality of DAA to a person's disability.

When the record contains evidence of DAA, a determination must be made whether or not the person would continue to be disabled if the individual stopped using drugs or alcohol. The trier of fact must determine what, if any, of the physical or mental limitations would remain if the person were to stop the use of the drugs or alcohol and whether any of these remaining limitations would be disabling. Such determination is not needed in claimant's case as he does not meet the disability criteria.

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: April 13, 2009

Date Mailed: April 14, 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]