

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: 2009-6947
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 19, 2009
Chippewa 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 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 October 18, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On November 3, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On November 5, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On November 14, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On December 28, 2008, the State Hearing Review Team again denied claimant's application stating that he was capable of performing other work, namely light unskilled work, and citing Vocational Rule 202.20.

(6) Claimant is a 48 year-old man whose birth date is [REDACTED] Claimant is 6' 1" tall and weighs 210 pounds after he lost 25 pounds since last summer due to not being active because of back problems. Claimant has a GED, and can read, write and do basic math.

(7) Claimant states that he last worked 4 years ago as a resident manager of a homeless shelter for 2 months, until the shelter closed due to lack of funding. Claimant also states he has worked as a direct care worker for 2-3 different companies for a couple of years "sometimes since year 2000", but this job bothered his back. Claimant was a laborer, worked in grocery stores and as a cashier prior to year 2000.

(8) Claimant lives with friends who give him food, and drives people around here and there so they give him money.

(9) Claimant alleges as disabling impairments spine spurring, disc bulging, compression fracture, and hypertension.

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 in 4 years. It is noted that claimant's medical record does contain a notation from a [REDACTED] doctor's visit that states that the claimant "is thinking about going back to work. He is hopeful that he will be able to get a painting job to begin next week" (Department's Exhibit I, page 227). While this could be an indication that the claimant is not being truthful about his work history, it will be assumed that the claimant is not currently employed. 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.

The objective medical evidence on the record consists of old medical information from year 2001 and before, and these 204 pages will not be considered in this decision as they do not reflect claimant's most recent medical problems. Claimant also testified that he has held jobs

since 2001, and therefore his medical condition prior to 2001 had apparently improved during the previous period of time.

Claimant was seen by a doctor on [REDACTED] for right lower extremity pain and back pain. Claimant stated he took a fall off the foot bridge and actually hung from his right lower extremity for several minutes over a 10-foot ravine before someone was able to help him. Claimant had bruising over his entire right leg but did not seek medical attention right away. Neurological exam revealed that the claimant has appropriate sensation in his bilateral lower extremities except some areas of numbness on the medial aspect of his right leg. Claimant's deep tendon reflexes were 2+ in both legs without deficit (Department's Exhibit I, page 226).

Claimant's medical reports also show a history of hypertension for which he received medications and recurrent cysts that were treated with antibiotics.

Medical Examination Report completed on [REDACTED] indicates that claimant has significant t-spine pain, 90% loss of vertebral bone heights, spinal stenosis, L1-2 disk herniation, and hypertension (Department's Exhibit I, pages 234 and 235). Claimant's condition is noted as deteriorating, he is limited to lifting/carrying up to and including 20 lbs. occasionally, and no assistive devices are required for ambulation. Claimant can use both of his hands/arms for repetitive actions and can meet his needs in the home without any assistance.

MRI of claimant's lumbar spine of September 16, 2008, states that the claimant has chronic T12 compression fracture with approximately 90% loss of vertebral body height anteriorly, moderate canal stenosis at the T12 level, multilevel acquired spinal stenosis most severe at the L4-5 level, L1-2 small focal central disk herniation with posterior annular tear, and L5-S1 small focal right paracentral disk herniation with posterior annular tear (Department's Exhibit I, pages 232 and 233).

MRI of claimant's cervical spine of [REDACTED] shows T12 compression fracture and mild multilevel degenerative disease (Department's Exhibit I, pages 230 and 231).

Claimant's hearing testimony is that he drives to the store and appointments and takes different people to their appointments, grocery shops, helps out with cleaning by vacuuming, doing the dishes and making his bed, and that he also cuts the lawn at one of the places he stays at on a riding lawnmower. Claimant smokes 1-2 cigarettes per day, drinks beer couple of times per week, but has not used marijuana since last year. Claimant plays the guitar, cards, watches TV, and goes places with other people.

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 combined with claimant's own hearing testimony about his physical condition 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 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 have to deny him again based upon his ability to perform past relevant work. Claimant's past relevant work was doing direct care for couple of years after year 2000 for several different companies, and working as a homeless shelter resident manager. As was noted

before, claimant's medical record has a notation that the claimant wanted to go back to work in May, 2008 and was hoping to get a job painting the following week. Claimant's testimony that he suffers from back pain so severe that he is unable to work at all is questionable, as is his claim that he has not worked in the last 4 years. Finding that the claimant is unable to perform work which he has engaged in in the past cannot therefore be reached due to conflicting information 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 *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 lacks the residual functional capacity to perform tasks from his prior employment, or that he is physically unable to do at least light work if demanded of him. Claimant's doctor states on the Medical Examination Report that the claimant can lift up to and including 20 lbs. at least part of the work day.

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 work. Under the Medical-Vocational guidelines, a younger individual (age 48), with even limited education (claimant has a GED) and an unskilled work history who can perform 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 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 and sedentary 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 8, 2009

Date Mailed: April 9, 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.

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