

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: 2009-6964

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 1, 2009

Lapeer 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 April 1, 2009. Claimant personally appeared and testified. Also appearing and testifying on claimant's behalf was his friend [REDACTED]

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 October 3, 2008, claimant filed an application for MA and retroactive MA benefits alleging disability.

(2) On October 30, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

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

(4) On November 18, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On January 5, 2009, the State Hearing Review Team (SHRT) again denied claimant's application stating he was capable of performing other work, namely light work per 20 CFR 416.967(b) and Vocational Rule 202.21.

(6) Claimant submitted additional evidence following the hearing. This evidence consisted of Internet printouts regarding medical conditions that the claimant feels he has, but none of the evidence was specific to the claimant. Administrative Law Judge sent this information, which is not medical evidence, to SHRT for additional review in error.

(7) On April 30, 2009, SHRT once again found the claimant not disabled.

(8) On May 14, 2009, this Administrative Law Judge received claimant's copy of the SHRT's April 30, 2009, decision that the claimant submitted to Lapeer County DHS. Included with this decision was claimant's listing of his impairments, list of medications printed on October 17, 2008, Operative Report from [REDACTED], MRI Lumbar Spine of [REDACTED] already contained in claimant's record, Operative Report for a hernia surgery claimant had in May, 2007, work restrictions from April, 2002, x-ray of claimant's cervical spine of [REDACTED] CT of the lumbar spine from April, 2000, surgical instructions from December, 2001, and operative report from January, 2002 for right rotator cuff tear.

(9) Additional information submitted by the claimant was not forwarded to SHRT as it is either too old and has no impact on current determination of disability (as the claimant worked up to April, 2003 in a factory), or are already in the record that was previously reviewed.

(10) Claimant is a 48 year-old man whose birth date is [REDACTED] Claimant is 5'8" tall and weighs 200 pounds. Claimant attended the 12th grade and has a GED, and was trained as a nuclear biological chemical weapons technician. Claimant can read, write and do basic math.

(11) Claimant states that he last worked in 2003 at a factory that made bolts and screws, at a job that he started in 1987. Claimant states he was laid off, probably due to claiming Workers Compensation benefits he received in 2003. Claimant sued for such benefits and received a settlement in 2007. Claimant was in the U.S. Navy from June, 1978 to October, 1985.

(12) Claimant testified that he has tried to do different things as far as getting a job, but he can't stand, walk or sit for prolonged periods of time. Claimant lives alone in a house and receives VA income and food stamps.

(13) Claimant alleges as disabling impairments: back, knee and shoulder pain, degenerative disc disease, PTSD, chronic pain, and migraine headaches.

(14) Claimant has additionally listed "Diagnosis 2009 Codes" under which he "falls" under on the back of April, 2009 SHRT decision that he sent back to the department. These impairments are spinal muscle atrophy, general osteoarthritis, cervical and lumbar disc displacement, lumbar/lumbosac disc degen., disc degeneration NOS, neck disorder/sympt NOS, spinal stenosis-lumbar, injury sciatic nerve, severe disability in his shoulders (rotor cuffs), degenerative disc disease in neck at C4-5, C5-6 and C6-7, and second right hernia operation done in May, 2007 that he feels was not noted before.

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 2003. 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 includes an Independent Medical Evaluation by a neurologist from January 18, 2007. Claimant complained of low back and left buttock area discomfort, and related that this pain started in 1995 in association with heavy work activities. Claimant underwent spine surgery in 1996, two right shoulder surgeries in 2001 and 2002, and multiple right knee surgeries for military trauma and also left knee surgery. Physical examination revealed extremity strength, coordination, tone, and bulk are totally normal in all extremities, both proximally and distally. Sensory examination was normal to pin prick, light touch, joint position sense, and vibration in all extremities. Reflexes are 2+ and symmetric at the biceps, triceps, brachioradialis, knees, and ankles. Straight leg raising maneuvers are negative

bilaterally. Lumbosacral spine flexibility is significantly reduced in flexion-extension, lateral flexion, and lateral rotation. Doctor believed that the claimant has legitimate spinal impairment, and recommended that he not lift more than 30 pounds and that he avoid repetitive bending and twisting. Further belief was that the claimant may benefit from an aggressive and comprehensive spinal reconditioning program that addresses his ongoing spinal flexibility deficits (Department's Exhibit I, pages 60 and 61).

On [REDACTED] claimant was seen for an independent medical examination regarding orthopedic complaints of pain at both shoulders, the low back and both knees. Extensive medical files were reviewed on the claimant including various work restrictions, radiology reports, MRI, etc. Impression was that of degenerative disks disease L5-S1, possible spinal stenosis, prior surgery at L4-5 level, left S1 strain, rule out disk herniation, bilateral early degenerative changes at knees with prior surgeries, bilateral degenerative changes of shoulders with previous surgeries, possible residual incomplete rotator cuff tendinopathies, possible slap lesion on right, and mild impingement type symptoms. Recommendations for restricted activity such as sit/stand option, avoiding ladder climbing, and very limited amount of squatting would all be very appropriate. Claimant should also be very limited in lifting activity until an MRI and neurosurgical opinion on his back is obtained. Regarding claimant's shoulders, the 15 lbs. bench level activity with avoiding overhead activity would be appropriate, as claimant experienced pain when he tried to bring his hands up to 90 to 120 degrees (Department's Exhibit I, pages 53-59).

[REDACTED] exam report at request of Disability Determination Service concludes that the claimant is status post back surgery, bilateral shoulder surgery, and bilateral knee surgery, with persistent pain in all of these areas (Department's Exhibit I, pages 84 and 85).

Claimant was granted service connection for low back condition with an evaluation of 20 percent effective [REDACTED] (Department's Exhibit I, p. 22).

MRI of claimant's lumbar spine of [REDACTED] shows post surgical changes in the lower lumbar spine with some epidural fibrosis on the left at L4-5 and posterior to the left L5 vertebral body. There are degenerative disc changes at L5-S1 and minimally at L4-5 but no significant disc herniation nor stenosis is demonstrated on this study (Department's Exhibit I, pages 69 and 70).

There is objective clinical medical evidence in the record that claimant suffers a severely restrictive physical impairment due to his back and shoulder issues. For these reasons, this Administrative Law Judge finds that claimant 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 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 finds that the claimant does not have the ability to perform past relevant work, as such work was in a factory requiring heavy lifting and movement.

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 sufficient objective medical evidence that he lacks the residual functional capacity to perform tasks from his prior employment. Independent medical exams cited above show that the claimant has considerable limitations in his physical ability to perform certain tasks. Claimant's credible hearing testimony is that he is in daily pain, has an electric stimulator for his back that sends electronic impulses and that he wears it most of the time, that he can only sit for about 45 minutes due to sciatica pain in his lower back, that he must lean while he stands, and that he must lean on a cart when walking around the grocery store. Claimant further testified that everything in his house is handicap-accessible, and that he uses a cane to ambulate, mention of which was also made in claimant's medical record as it was noted he would fall without it (Department's Exhibit I, p. 87). Claimant's shoulder problems however make it difficult for him to use the cane all the time, as it causes pain. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record in addition to claimant's hearing testimony which has basis in the medical record does establish that claimant has no residual functional capacity to perform other work, . Claimant is therefore not disqualified from receiving disability at Step 5.

The claimant has 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). There is 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, and that such impairments have lasted for 12 months. The claimant is 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 not 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.

Accordingly, the department's decision is REVERSED. Department shall:

1. Process claimant's disputed MA and retroactive MA October 3, 2008, application and grant him any such benefits he is otherwise eligible for (i.e. meets non-financial and financial eligibility criteria).
2. Review claimant's continuing MA eligibility in June, 2010, at which time claimant is to provide updated medical records.

SO ORDERED.

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

Date Signed: June 10, 2009

Date Mailed: June 11, 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]