

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: 2009-7466
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 31, 2009
Grand Traverse 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 31, 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 September 29, 2008, claimant filed an application for MA and SDA benefits alleging disability.

(2) On October 24, 2008, the Medical Review Team denied claimant's application stating that his condition lacks duration of 12 months for MA, and also denied the SDA.

(3) On October 27, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On October 31, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On January 8, 2009, the State Hearing Review Team (SHRT) also denied claimant's application stating impairment lacks duration per 20 CFR 416.909 for MA, as his condition is expected to improve within 12 months from the date of onset or from the date of surgery. SHRT also denied claimant's SDA application as the impairment(s) would not preclude all work for 90 days.

(6) Claimant submitted additional medical report following the hearing, and this report was submitted to SHRT for additional review. On April 22, 2009, SHRT once again denied claimant's application indicating he was capable of sedentary work and that his current medical report states he is making steady gains and continues to improve.

(7) Claimant is a 36 year-old man who is 5'10" and weighs 145 pounds. Claimant has a high school diploma and attended two colleges for about a year taking courses in liberal arts.

(8) Claimant last worked in September, 2008, as a plastics welder for 2 months, but has had these types of jobs about 8 times since 1996. Claimant was also a cook for 1 ½ years and tested hydraulic valves for off shore oil riggs.

(9) Claimant currently lives in a studio apartment paid for by his mother and receives food stamps. Claimant has no driver's license due to two drunken driving offenses in 2005.

(10) Claimant testified that his hobby is drinking alcohol, watching TV and reading books. Claimant states he chews tobacco, drinks vodka on a daily basis as it "takes the pain away", and that he can walk any distance required if it is to buy alcohol.

(11) Claimant alleges as disabling impairment a leg injury that gives him trouble while walking. Claimant suffered this injury on September 26, 2008, after leaving rehabilitation center, going to a friend's house and getting drunk. Claimant then attempted to jump over a fence, his belt buckle was caught over the fence, and he was left dangling for several hours, resulting in abrasions and pressure marks over his right thigh and anterior knee.

(12) Claimant has applied for Social Security disability, been denied, and is in a process of 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 September, 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 that has lasted or is expected to last for duration of at least 12 months.

The objective medical evidence on the record consists of almost 400 pages of records dating back to year 2002. Majority of the records until September, 2008 consists of documentation of claimant's severe alcohol use problems. In May, 2002 claimant came to the emergency room after leaving an alcohol treatment center because he wanted to stop drinking and was feeling anxious and shaky (Department's Exhibit I, page 13). In December, 2004 claimant presented to a Medical Center's Alcohol and Drug Treatment Center for treatment after being sober for 2 ½ weeks and starting to drink for 4 days, and continuing on a drinking binge. Claimant also did intravenous cocaine and abused methadone from July, 2004 to September, 2004. It was noted that the claimant has chronic alcoholism, and multiple serial emergency room visits with blood alcohol in excess of over 300 (Department's Exhibit I, pages 81 and 82). On October 27, 2007, claimant was seen at a medical center acutely intoxicated with alcohol, with his alcohol level being elevated to 312 after being there for a period of time (Department's Exhibit I, page 165). On October 31, 2007, claimant was again at a medical center with alcohol level 422, and was diagnosed with ethanol intoxication and laceration of the right earlobe (Department's Exhibit I, pages 168 and 169). In March, 2008 claimant was once again at a medical center with alcohol intoxication after being in a treatment center for 1 day before his girlfriend brought him in a Gatorade with vodka in it (Department's Exhibit I, page 221).

On September 27, 2008, claimant was at a medical center after releasing himself from a substance abuse treatment facility, drinking vodka at a friend's house, attempting to climb over a fence, getting caught in it, and being unable to release his right leg from the fencing. Claimant was then suspended for several hours early that morning until he was found by police. Claimant had hypothermia, was still drunk, and had abrasions and pressure marks over his right thigh and anterior knee. Claimant was found to have acute rhabdomyolysis secondary to trauma with marked elevation of his CPK along with metabolic acidosis. As claimant's clothing wrapped

around his leg a marked compartment syndrome of his right leg developed. Claimant's leg swelled and was tender and he underwent surgery in order to save his leg. It was noted that the claimant has been a long standing alcoholic and has been in rehabilitation multiple times. Claimant also admitted to using IV cocaine, and had recently consumed Valium and Adderall for street drug use. Claimant is an avid runner and has been training excessively up until his recent admission to a substance abuse treatment center 5 days prior. Claimant was eventually released from the hospital on [REDACTED] home with assistance available from family/caregiver, to ambulate with a walker, limit activity level, and no running (Department's Exhibit I, pages 248-253, 334-335, 341-344, and 347).

[REDACTED] notes dated [REDACTED] stated that the claimant has been in physical therapy between November 21, 2008 and February 27, 2009, as prescribed by a doctor. Claimants initially exhibited significant weakness throughout his right lower extremity, and because of nerve involvement from his injury, his hip and ankle were weak as well. Claimant at first ambulated with one crutch cautiously as he was at great risk for falling due to knee instability from the weakness. He could only negotiate stairs one step at a time, could not stand on his right leg safely, and was unable to squat. His pain level at that time was moderate and constant. Claimant made slow but steady gains during his course of therapy, and at the time of discharge was able to climb stairs step over step without upper extremity support. He was able to descend stairs step over step as well but moved more slowly and cautiously due to the weakness and fear of buckling. He was still unable to perform a deep squat, and was instructed in a home program with plans to continue with his rehabilitation under the guidance of a personal trainer at a community gym.

There is objective clinical medical evidence in the record that claimant suffered a severely restrictive physical impairment due to his leg injury at the end of September, 2008.

However, as of end of February, 2009, after receiving physical therapy, claimant's condition had greatly improved, and cannot be expected to last 12 months or more, as required for MA eligibility purposes. 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 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, if claimant had not already been denied at Step 2, the Administrative Law Judge would have to consider his ability to perform past relevant work. Claimant's past relevant work was as a welder, cook, and on oil rigs. Claimant is recovering from his injury well according to the physical therapy report, and a possibility exists that he can perform jobs requiring physical exertion fairly soon again. 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 *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 at least sedentary work if demanded of him, even with great consideration given to his leg injury from which he is recovering in a satisfactory manner. Claimant's own testimony is that he can walk long distances if it is to purchase alcohol, and that he watches TV and reads books, sedentary activities which require prolonged sitting. 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 work. Under the Medical-Vocational guidelines, a younger individual (age 18-44), with high school education and an unskilled work history who can perform sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.27.

It is also noted that even if the claimant met the disability criterion, his alcohol abuse 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.

Claimant's medical record leaves no doubt that claimant has a very serious alcohol problem. Claimant's very honest testimony is that he drinks hard liquor on a daily basis, and this issue would definitely have to be considered if the claimant was suffering from other impairments that may be caused by his alcoholism. Claimant is not claiming any other impairments except his leg injury, and his medical record does not show any other issues and indicates that he is a marathon runner otherwise.

In conclusion, 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, as his impairment(s) caused by the leg injury were only a temporary condition and not expected to last 12 months or more. 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. The claimant does not meet the definition of disabled under the MA-P program. However, the evidence of record does establish that claimant was unable to work for a period exceeding 90 days, from September 27, 2008, date of his leg injury, to

February 27, 2009, date he was released from his physical therapy and found to have made sufficient improvement not to need such therapy any longer. The claimant therefore meets the disability criteria for State Disability Assistance benefits for a closed period of time.

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. Department's denial of claimant's MA and retroactive MA application is therefore AFFIRMED.

The claimant however did meet the disability criteria for State Disability Assistance benefits for a closed period of time exceeding 90 days required by departmental policy. Accordingly, department's denial of claimant's SDA application is therefore REVERSED.

Department shall:

1. Process claimant's SDA application of September 29, 2008.
2. If the claimant meets eligibility criteria (i.e. financial and non-financial eligibility requirements), approve SDA benefits for the claimant in accordance with department policy, for a closed period of time from the date of his application to February 27, 2009.
3. Issue the claimant SDA benefits for this period of time starting with the payment period in accordance with department's policy and ending on February 27, 2009.

4. Notify the claimant in writing of this determination.

SO ORDERED.

/s/

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

Date Signed: May 27, 2009

Date Mailed: May 29, 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]