

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: 2009-9593

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 8, 2009

Oakland 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 8, 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 16, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On November 5, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On November 13, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On November 24, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On January 13, 2009, the State Hearing Review Team (SHRT) again denied claimant's application stating he retains the capacity to perform a wide range of light work.

(6) Claimant presented additional medical information following the hearing, and this information was forwarded to SHRT for additional review. SHRT once again determined that the claimant was not disabled as he was capable of performing other work, namely sedentary work per 20 CFR 416.967(a) and Vocational Rule 201.20.

(7) Claimant is a 48 year-old man whose birth date is [REDACTED] Claimant is 5'7" tall and weighs 185 pounds. Claimant attended the 12th grade but does not have a high school diploma or a GED. Claimant is able to read, write and do basic math.

(8) Claimant states that he currently provides care for his mentally and physically handicapped brother who lives with his mother for 12 hours per week and is paid by the State of Michigan for this care at \$10 per hour, \$120 per week.

(9) Claimant worked 1 year ago in a general labor job for 3-4 weeks, but was having serious back problems and was replaced. Claimant was a veterinary technician from 1988 to 2006 and worked with dogs, but had to quit due to back problems and because he was tired of getting bit.

(10) Claimant currently lives with his wife in a rented apartment. Claimant's wife is employed by the chiropractor that has treated the claimant.

(11) Claimant alleges as disabling impairments back problems due to herniated discs and right knee problems that make it difficult to bend over.

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 receiving \$120 per week for taking care of his disabled brother. As the income amount is not sufficient for the claimant to be considered engaged in substantial gainful activity, 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 emergency room report from April 22, 2008, for claimant's complaint of low back pain. Claimant stated he has had back pain in the same area for the last three years, but over the last two weeks he has been doing a lot more heavy lifting, and may have hurt his back a little bit more than normal. Claimant looked to have an acute exacerbation of his chronic low back pain, but had not neurological deficits and no problems with his bowel or bladder. Claimant wanted something stronger for pain and was given some Vicodin (Department's Exhibit I, pages 13 and 14).

Medical Examination Report from claimant's chiropractor completed on [REDACTED] for date of last examination being [REDACTED] indicates as claimant's current diagnosis degenerative disc disease with dislocation in lumbar and thoracic areas. Claimant's condition was noted as deteriorating, he could lift/carry up to 10 lbs. occasionally, but was restricted in standing/walking and sitting, and he could use both arms for simple grasping and fine manipulating but neither feet/legs for operating foot/leg controls. This statement is apparently not true, as the claimant testified at the hearing that he drives 2 to 3 times per week about 10 miles to see this same chiropractor, so he apparently can use his feet/legs for operating foot/leg controls. Claimant had no mental limitations (Department's Exhibit I, pages 15 and 16).

Medical Examination Report from an M.D. completed on [REDACTED] for date of last examination of [REDACTED] states as claimant's diagnosis retrolisthesis and diffuse disk bulging at L1-L2 with resulting mild spinal canal stenosis and neural foraminal stenosis

bilateral, and circumferential disk bulging at L2-L3, L3-L4, and L4-5 interspaces with some minimal encroachment of the neural foramina at L4 and L5, and some facet joint arthropathy at this level. These findings were based on CT of claimant's lumbar spine done on [REDACTED] (Department's Exhibit I, pages 9 and 10). Claimant was noted to have gait atalgia and could not straighten completely, and also moved with difficulty. Claimant's condition was marked as stable, he could lift/carry up to 10 lbs. occasionally but could not sit or stand consecutively, had problems using his hands/arms for repetitive actions, and could only operate foot/leg controls briefly. Claimant had no mental limitations (Department's Exhibit I, pages 7 and 8).

[REDACTED] exam report by the claimant's chiropractor states that he has been treating him since [REDACTED] for complaints of chronic lower back pain located in the lower thoracic and lumbar spine. Prognosis for the claimant was guarded as there is a general weakening in the supporting soft tissues and positioning of the osseous structures in the areas damaged, specifically, the muscles, tendons and ligaments. Claimant has no neurological deficits and his deep tendon reflexes were within normal limits. Physical activities such as sitting or standing for significant periods of time, walking, and repetitive motions in chiropractor's opinion would aggravate claimant's condition and could result in further deterioration of his condition (Department's Exhibit I, pages 17-19).

Additional letter from claimant's doctor dated [REDACTED] repeats [REDACTED] CT scan findings, and states that it is difficult and painful for the claimant to walk or sit for any length of time, he is unable to stand or sit more than 2 hours and has a limited range of motion making it impossible to maintain employment. There is also a letter from the same date from claimant's chiropractor stating same restrictions for the claimant.

Medical evidence in the record appears to suggest that the claimant suffers a severely restrictive physical impairment. Claimant's hearing testimony is that cannot grocery shop, clean house, that he watches TV and sleeps most of the time, that he sleeps with a back brace and uses ice packs on his back, that he sees the chiropractor every other day, that he can sit for about 30 minutes, stand for 1 hour, and walk for about one block. Claimant has no mental limitations.

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 has to consider claimant's ability to perform past relevant work. Claimant's past relevant work was as a veterinary technician, job he held from 1988 to 2006. Claimant testified that he worked with dogs and had to quit due to having back problems, but he also wrote on the Social Summary form that he "got bit by dogs too often" when he quit this type of job in 2004, and "had enough of vet animal bus." when he quit the same type of job in 2006 (Department's Exhibit I, p. 6). Finding that the claimant is unable to perform work which he has engaged in in the past cannot therefore be conclusively reached and the claimant could be 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 sedentary work if demanded of him. Medical information presented support the conclusion that the claimant is capable of sedentary work. Furthermore, claimant is performing such work currently, as he is taking care of his disabled brother by staying with him 12 hours per week and not engaging in any heavy lifting, and also getting paid for these duties. 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 45-49 (claimant is 48), with limited education and an unskilled work history who can perform sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.18.

The claimant presented the required competent, material, and substantial evidence which would support a finding that the claimant has an impairment or combination of impairments which could possibly significantly limit the physical or ability to do basic work activities. 20 CFR 416.920(c). However, the documentation submitted by the claimant is not sufficient to establish a finding that the claimant is disabled to the point that he cannot perform any type of work. 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 at least sedentary work and possibly light 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: 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]