

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 2010-14311
Issue No: 2009; 4031

[REDACTED]

ADMINISTRATIVE LAW JUDGE: Suzanne L. Morris for Jana Bachman

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 February 11, 2010 by Administrative Law Judge [REDACTED], who has since left employment with the State Office of Administrative Hearings and Rules. This hearing was completed by Administrative Law [REDACTED] after reviewing the record. Claimant personally appeared and provided testimony.

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 28, 2009, claimant filed an application for Medical Assistance (MA) and State Disability Assistance benefits alleging disability.
- (2) On November 25, 2009, the Medical Review Team denied claimant's application stating that the claimant was capable of performing other work, pursuant to Vocational Rule 201.27. (Department Exhibit A, pages 34 – 35)
- (3) On December 2, 2009, the department caseworker sent claimant notice that his application was denied.

- (4) On December 10, 2009, claimant filed a request for a hearing to contest the department's negative action.
- (5) On January 12, 2010, the State Hearing Review Team again denied claimant's application stating that the claimant was capable of performing other work, pursuant to Vocational Rule 202.21. (Department Exhibit B, pages 1 – 2)
- (6) A telephone hearing was held on February 11, 2010.
- (7) Claimant alleges disabling impairments based on a herniated disc and depression.
- (8) Claimant is a 24-year-old man whose birth date is August 28, 1986. Claimant is 5'9" tall and weighs 230 pounds. Claimant completed high school. Claimant reports that he is able to read and write and perform basic math.
- (9) Claimant reported that he last worked in 2009. His past relevant work experience includes managing a fast food restaurant, fast food restaurant work, and factory work.
- (10) Claimant reports that he is homeless and does not perform cooking or housekeeping duties. The claimant does not have a valid driver's license due to fines. Claimant reports that he will watch television and walk around, but that he has lots of pain and it is hard to move.
- (11) Claimant was evaluated by a Physician's Assistant on September 17, 2008 with a chief complaint of depression. Claimant reported that he smoked two packs of cigarettes per day and drank about a 12-pack of beer each week. The evaluation found the claimant with appropriate judgment and insight, oriented to person, place and time, with normal recent and remote memory. Claimant had a mildly depressed affect. Claimant was prescribed Paxil. (Department Exhibit A, pages 1 – 2)
- (12) Claimant was examined by a physician on September 18, 2008. Claimant presented with pain in his right arm. The claimant was diagnosed with carpal tunnel syndrome/median nerve entrapment and was prescribed a wrist immobilizer and Naprosyn. (Department Exhibit A, pages 3 – 4)
- (13) Claimant was seen for lower back pain on April 1, 2009. The musculoskeletal exam found the claimant to be moderately overweight with bilateral lower paraspinal muscle tenderness, normal straight leg raise, no pelvic tilt or S1 joint tenderness noted, full range of motion, normal rotation and normal strength and tone. Claimant was prescribed Ultram and Flexeril. (Department Exhibit A, pages 6 – 7)

- (14) An April 2, 2009 Xray of the lumbar spine found bilateral L5 Pars interarticularis defect, moderate narrowing of L5 – S1 disc space, no spondylolisthesis, pedicles normal and soft tissue structures normal. (Department Exhibit A, page 8 – 9)
- (15) On April 20, 2009, the claimant was again examined. He presented wanting stronger pain medications. Examination of the claimant found no spinous processes tenderness, left lower paraspinal muscle tenderness, full range of motion, normal rotation, normal strength and tone. Claimant was given a physical therapy referral. (Department Exhibit A, pages 13 – 14)
- (16) An August 17, 2009 examination of the claimant found tender lumbar spinous processes, full range of motion, normal rotation, and normal strength and tone. (Department Exhibit A, pages 15 – 16)
- (17) On August 21, 2009, an MRI of the lumbar spine was conducted. The test found grade I spondylolisthesis secondary to spondylolysis and disc disease with right greater than left L5 and right S1 nerve root contact. (Department Exhibit A, pages 16 – 18)
- (18) A consultative examination with a neurosurgeon found intractable back pain, spondylolysis with a grade I listhesis of L5 on S1. Claimant has been unresponsive to pain clinic and physical therapy. The neurosurgeon opined that the claimant was unable to work and recommended therapeutic injections or lumbar fusion surgery. (Department Exhibit A, page 22)
- (19) On February 11, 2010, [REDACTED] issued an Interim Order that left the record open for the department to obtain a psychiatric examination.
- (20) A psychological examination was conducted on May 15, 2010. The exam found claimant to be oriented to time, person and place. His affect was dysphoric and he appeared distracted. His thoughts were organized, coherent and spontaneously generated; no sign of a thought disorder; speech was clear and understandable. Claimant was found to have psychiatric symptoms of depression and panic episodes of anxiety. He was found to have problems with short-term memory. (Department Exhibit A, pages 36 – 40)
- (21) On July 15, 2010, the State Hearing Review Team again denied the claimant's application indicating that the new evidence did not significantly or materially alter the previous recommended decision.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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 has not worked since 2009. 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 the duration of at least 12 months. 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual's physical or mental ability to perform basic work activities. Basic work activities mean 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).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the department may only screen out claims at this level which are "totally groundless" solely from a medical standpoint. The *Higgs* court used the severity requirement as a "*de minimus* hurdle" in the disability determination. The *de minimus* standard is a provision of a law that allows the court to disregard trifling matters. Medical evidence has clearly established that claimant has an impairment (or combination of impairments) that has more than a minimal effect on claimant's work activities. See Social Security Rulings 85-28, 88-13, and 82-63. Therefore, claimant is not disqualified from receiving disability at Step 2.

The analysis next proceeds to Step 3. In the third step of the sequential consideration of a disability claim, 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).

The analysis then proceeds to Step 4 to assess claimant's ability to perform past relevant work. Construing the evidence in the light most favorable to the claimant, this Administrative Law Judge finds that claimant may be unable to perform work in which he has engaged in, in the past. The types of jobs the claimant previously performed might exacerbate claimant's pain levels and/or cause injury. As such, the claimant would not be disqualified at Step 4 and the analysis would continue.

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 some other less strenuous tasks than in his prior 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).

If you cannot do any work you have done in the past because you have a severe impairment(s), we will consider your residual functional capacity and your age, education, and past work experience to see if you can do other work. If you cannot, we will find you disabled. 20 CFR 416.920(f) (1).

Under the Medical-Vocational guidelines, a younger individual, with a high school diploma and a skilled or semi-skilled work history is not considered disabled. (See Vocational Rule 202.21)

Claimant has submitted insufficient objective medical evidence that he lacks the residual functional capacity to perform some other less strenuous tasks than in his prior employment or that he is physically unable to do light or sedentary tasks if demanded of him. Claimant has failed to provide the necessary objective medical evidence to establish that he has a severe impairment or combination of impairments which prevent him from performing any level of work for a period of 12 months. The claimant's testimony as to his limitations indicates that he should be able to perform light or sedentary work. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity. 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 light or sedentary work even with his impairments.

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. BEM, Item 261, p. 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

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that claimant was not eligible to receive Medical Assistance and/or State Disability Assistance.

