

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: 2010-1748
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 18, 2009
Oscoda 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 November 18, 2009. Claimant personally appeared and testified. Claimant was represented by [REDACTED].

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P), retroactive MA 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 July 17, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On August 13, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work, and using Vocational Grid Rule 201.17 as basis for the denial.

(3) On August 13, 2009 the department caseworker sent claimant notice that his application was denied.

(4) On August 20, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On October 19, 2009, the State Hearing Review Team (SHRT) again denied claimant's application stating he was capable of performing medium work per 20 CFR 416.967(c) and Vocational rule 203.25.

(6) Claimant submitted additional medical information following the hearing which was forwarded to SHRT for review. On January 15, 2010 SHRT once again determined that the claimant was not disabled, as he was capable of medium, unskilled work.

(7) Claimant is a 50year old man whose birth date is [REDACTED]. Claimant is 6' 1" tall and weighs 185 pounds. Claimant attended the 10th grade and does not have a GED. Claimant is able to read, write and do basic math.

(8) Claimant states that he last worked in year 2000 in building maintenance for a company that went bankrupt, job that lasted him 13 years. Claimant has been raising his children since year 2000 and was supported by his wife who worked.

(9) Claimant currently lives in a mobile home with a roommate and receives food stamps. Claimant has a driver's license and drives couple of times per week to the town store, cooks occasionally, does some housework, and watches TV and walks the dog to pass the time.

(10) Claimant alleges as disabling impairments: neck and back pain, arthritis, degenerative disc disease, and depression due to separation from his wife.

(11) Claimant has applied for Social Security disability and been denied, and is 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (RFT).

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 (RFT).

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, that being a five-step sequential evaluation process for determining whether an individual is disabled (20 CFR 404.1520(a) and 416.920(a)). The steps are followed in order. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If it is determined that the claimant is or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.

At Step 1, the Administrative Law Judge must determine whether the claimant is engaging in substantial gainful activity (20 CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. “Substantial work activity” is work activity that involves doing significant physical or mental activities (20 CFR 404.1572(a) and 416.972(a)). “Gainful work activity” is work that is usually done for pay or profit, whether or not a profit is realized (20 CFR 404.1572(b) and 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that he/she has demonstrated the ability to engage in SGA (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, he/she is not disabled regardless of how severe his/her physical or mental impairments are and regardless of his/her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At Step 2, the Administrative Law Judge must determine whether the claimant has a medically determinable impairment that is “severe” or a combination of impairments that is “severe” (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is “severe” within the meaning of the regulations if it significantly limits an individual’s ability

to perform basic work activities. An impairment or combination of impairments is “not severe” when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual’s ability to work (20 CFR 404.1521 and 416.921; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p). If the claimant does not have a severe medically determinable impairment or combination of impairments, he/she is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

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). 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).

At Step 3, the Administrative Law Judge must determine whether the claimant's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the claimant's impairment or combination of

impairments meets or medically equals the criteria of a listing and meets the duration requirement (20 CFR 404.1509 and 416.909), the claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine the claimant's residual functional capacity (20 CFR 404.1520(e) and 416.920(e)). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of the claimant's impairments, including impairments that are not severe, must be considered (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, the Administrative Law Judge must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his/her past relevant work (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as the claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the claimant to learn to do the job and have been SGA (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If the claimant has the residual functional capacity to do his/her past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), the Administrative Law Judge must determine whether the claimant is able to do any other work considering his/her residual functional capacity, age, education, and work experience. If the

claimant is able to do other work, he/she is not disabled. If the claimant is not able to do other work and meets the duration requirements, he/she is disabled.

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).

At Step 1, claimant is not engaged in substantial gainful activity and testified that he has not worked since year 2000. Claimant is not disqualified from receiving disability at Step 1.

At Step 2, in considering the claimant's symptoms, whether there is an underlying medically determinable physical or mental impairment(s)-i.e., an impairment(s) that can be shown by medically acceptable clinical and laboratory diagnostic techniques-that could reasonably be expected to produce the claimant's pain or other symptoms must be determined. Once an underlying physical or mental impairment(s) has been shown, the Administrative Law Judge must evaluate the intensity, persistence, and limiting effects of the claimant's symptoms to determine the extent to which they limit the claimant's ability to do basic work activities. For this purpose, whenever statements about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not substantiated by objective medical evidence, a finding on the credibility of the statements based on a consideration of the entire case record must be made.

The objective medical evidence on the record includes a [REDACTED] [REDACTED] medical evaluation. Claimant's chief complaints were arthritis, neck, right shoulder and lower back pain. Claimant reported a history of chronic degenerative arthritis predominately in his neck, right shoulder and lower back, that he has been told he has two

herniated discs in his lumbar spine, and that he did have a lumbar spine laminectomy at L4-L5 in 1997. Claimant has been taking nothing for pain, has not undergone any therapy and did not use an assist device, but did complain of stiffness in the morning. Physical exam revealed no evidence of joint laxity, crepitance, or effusion, grip strength remained intact, dexterity was unimpaired, and claimant had no difficulty getting on and off the examination table, no difficulty heel and toe walking, mild difficulty squatting, and mild difficulty hopping. Claimant also had diminished space height with lumbar spine straightening. Neurologically, claimant's motor strength and tone were normal, sensory intact to light touch and pinprick, reflexes +2 and symmetrical, Romberg testing negative, and he walked with a normal gait without the use of an assist device. Conclusion was that of lower back pain, and the claimant did appear to have some degenerative arthropathy with diminished range of motion predominately in the lumbar spine. Claimant also had findings of some mild degeneration in the right shoulder. Claimant's cervical spine range of motion was well preserved, as was his grip strength and dexterity. Claimant was not undergoing any treatment. Anti-inflammatories and range of motion exercises would be helpful. There were no findings of laxity. Claimant's long-term prognosis appeared to be fair to guarded, and avoidance of repetition or overhead work would be indicated. There were no findings of myopathy or neuropathy.

May 6, 2009 x-ray of claimant's cervical spine showed moderately severe narrowing at C5-C6 level, and facet hypertrophy was seen causing moderate neural foraminal narrowing at this level. Disc spaces were well maintained, and there was no acute fracture or focal destructive process seen at this time.

MRI of claimant's lumbar spine of April 21, 2009 showed degenerative disc changes in the lumbar disks, most prominent at L4-L5 level. There were postsurgical changes in the form of

left side microlaminectomy diskectomy at L4-L5 level. There was a moderate-sized focal left paracentral disk herniation at L4-L5 level which may represent recurrent disk herniation, compressing the thecal sac and intraspinal left L5 nerve root.

MRI of claimant's left hip due to complaint of left hip and leg pain of April 21, 2009 showed no bone, joint or soft tissue abnormality.

Medical Examination Report for an exam of June 13, 2009 by a neurosurgeon states as current diagnosis degenerative disc disease and disc herniation, as shown by the MRI. It is noted that the claimant may require spinal fusion. Claimant's condition is listed as stable and he has no physical limitations from that office.

Written report by the same neurosurgeon for the June 13, 2009 visit states that a systemic review of the head, nose, throat, endocrine, cardiorespiratory, gastrointestinal, bone and joint, genitourinary, neuromuscular, mental status, family history, allergies and chart was done. The neurosurgeon could not come up with any definite findings and he does not find any atrophy, muscle contraction, autonomic change or reflex loss. Claimant has facet joint arthropathy which is very significant with changes at the L4-5 level. Claimant is probably going to require a fusion if he has operative intervention.

June 20, 2009 MRI of claimant's lumbar spine revealed stable postoperative appearance of the lumbar spine. Degenerative disk disease and postoperative changes are again noted at the L4-5 level as on the MRI exam of April 21, 2009.

July 6, 2009 report from an orthopedic surgeon quotes the claimant as saying the pain in his back and leg are intolerable. Impression is that of degenerative disc disease of the lumbar spine with degenerative spondylos, stenosis, instability and radiculopathy with recurrent disc herniation. Claimant was encouraged strongly to quit smoking to improve his overall prognosis.

Claimant wants to have surgery and stated he would quit smoking to improve his overall prognosis. It is noted that the claimant has not done so at the time of the hearing, as he testified he was still smoking a pack of cigarettes every 2 days.

Additional medical information provided following the hearing includes a Medical Examination Report of September 3, 2009 with a current diagnosis for the claimant being back pain and cervical disc disease. All of claimant's examination areas are listed as normal with the exception of neck pain and anxious and depressed appearance. Claimant's condition is stable, he is limited in lifting up to 10 lbs. frequently and up to 20 lbs. occasionally, standing and/or walking at least 2 hours in an 8-hour workday, and sitting less than 6 hours in an 8-hour workday. No assistive devices are medically required for ambulation. Claimant can use both of his hands/arms for repetitive actions except for pushing/pulling, and can operate foot/leg controls with both feet/legs. Claimant is limited in sustained concentration.

Cervical spine exam of September 14, 2009 indicates degenerative disc space and foraminal narrowing on the right side at C4/5 and C5/6 and on the left side at C4/5 and C5/6. There is no compression fracture, bone destruction or other acute osseous or soft tissue abnormality.

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. Analysis therefore continues to Step 3.

At 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. 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 it questionable that the claimant could perform his past relevant work. Claimant's past relevant work was doing building maintenance. Claimant does have degenerative disc disease that would limit his ability to lift, etc. Finding that the claimant is unable to perform work which he has engaged in in the past can therefore be reached and the claimant is not 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 [REDACTED], published by the [REDACTED] [REDACTED]... 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, but not that he is physically unable to do light work if demanded of him. 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 light work. Claimant's own physician indicates so on the Medical Examination Report for November 3, 2009 exam by citing what claimant's limitations are. Under the Medical-Vocational guidelines, an individual closely approaching advanced age (claimant is age 50), with

limited education and an unskilled or no work history who can perform light work is not considered disabled pursuant to Medical-Vocational Rule 202.10.

In conclusion, 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 Bridges 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, 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 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: August 3, 2010

Date Mailed: August 3, 2010

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/tg

cc:

[REDACTED]