

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 2010-30646
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 13, 2010
Muskegon 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 May 13, 2010. Claimant personally appeared and testified along with his friend [REDACTED]

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 December 28, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On April 2, 2010 the Medical Review Team denied claimant's application stating that claimant could perform other work.
- (3) On April 5, 2010, the department caseworker sent claimant notice that his application was denied.
- (4) On April 13, 2010, claimant filed a request for a hearing to contest the department's negative action.

- (5) On April 26, 2010, the State Hearing Review Team again denied claimant's application stating he was capable of light work per Vocational Rule 202.13.
- (6) Claimant is a 52 year old man whose birthday is [REDACTED]. Claimant is 5'11" tall and weighs 240 lbs. Claimant completed 1 year of college in general business classes and can read, write and do basic math.
- (7) Claimant states that he last worked in 2009 for 2 months at a packaging plant, job that ended because his back hurt too much. Claimant has been living with friends or relatives for the last 15 years and has not worked anywhere in that time.
- (8) Claimant currently lives at a friend's house and receives food stamps, has a driver's license but no car, does not cook, does very little house cleaning, and sits in a cart when grocery shopping.
- (9) Claimant alleges as disabling impairments: back pain due to severe spinal stenosis, shoulder pain, and depression.
- (10) Claimant has applied for Social Security disability and according to DHS Bridges system was recently denied.

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 4 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 4 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 in the last 15 years except for 2 months in 2009. 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 Medical Examination Report of February 3, 2010 with current diagnosis for the claimant being lumbar back pain. Claimant was 228 lbs. with blood pressure of 124/84. Claimant seemed unsteady on his feet, had decreased lumbar range of motion and positive left straight leg raise, and pain to palpation in the low back. Claimant had depressive symptoms. X-rays were to be ordered and physical limitations were unknown at the time.

Lumbar x-ray of February 25, 2010 states that the claimant has severe spinal stenosis at L4-L5, recess stenosis at L5-S1, and mild narrowing at L3-L4. Medical exam of the same date quotes the claimant as stating he has back pain, numbness and tingling and shooting pains at times into his bilateral thighs, and his pain level is currently 8-8.5/10. Claimant denies weakness in his lower extremities bilaterally and denies tripping or falling. Claimant's history includes alcohol and cocaine abuse per records received from [REDACTED] and participation in the [REDACTED] program. Claimant denied current alcohol or drug use. Physical exam revealed pulses to be 5/5 bilaterally in lower extremity and no edema. Claimant also had normal muscle strength in both lower extremities, and normal gait and station even though he was slow and cautious. Range of motion was decreased and movements painful. Claimant had no paraspinous muscle spasm but was tender in this area. Claimant was given Neurontin and Flexeril.

Mental status evaluation of January 28, 2009 indicates that the claimant reported experiencing depressive mood states throughout the past few years, and is also experiencing severe and chronic back pain. Claimant denied current or previous suicidal thoughts, and he has never participated in inpatient or outpatient mental health services. Claimant's longest term of employment was in the 1990's in a factory setting

for about 3 years. Claimant has been convicted of “two or three” felonies of breaking and entering and retail fraud, and has been incarcerated about five times with longest incarceration being two years and most recent jail sentence in 2008 for child support back-pay. Claimant was vague about his history of substance abuse and first stated he “used to” use marijuana and alcohol, but then said he drank two 40 ounce bottles of alcohol the day before and used marijuana a week ago. Claimant was staying in a homeless shelter and has been there for the last two years.

Claimant arrived on time for his appointment as he took the bus and walked several blocks from the closest bus stop. Gait and gross physical movements were unremarkable. No symptoms of psychosis were evident and he appeared to be in good contact with reality. Gross receptive and expressive speech functions were intact, and thoughts were presented at an even pace and with reasonable clarity. Claimant had no known history of a thought disorder and denied experiencing associated symptoms. His affect was depressed. Claimant’s diagnoses included depressive disorder, NOS, polysubstance abuse, NOS, and a GAF of 50. It was noted that the claimant would not be capable of managing benefit funds due to substance abuse issues.

December 22, 2009 medical exam quotes as claimant’s complaints back problems, left shoulder pain, memory problems, and possible depression. Claimant stated he is upset because he wants to be able to provide for himself, but is homeless at present and staying at a shelter. Claimant further stated he may have had a drinking problem but has not been drinking for at least a year, and denied any street drug use. Examination showed that the claimant’s left shoulder was uncomfortable with range of motion with the pain at the AC joint which was slightly tender but did not feel prominent or separated. The back was straight without deformity or focal tenderness but axial loading was uncomfortable as was straight leg raising. Claimant had no radicular symptoms or signs, sensory and motor were full throughout the lower extremities and the hips were not irritable. His gait was peculiar at first, shuffling and with a short swing phase but normalized when he started using his cane again. He had a good tandem gait and good strength walking on heels and toes as well as squatting and recovering.

Claimant was not fully oriented and even had to struggle to recall the name of the friend that brought him to the exam. Impression was that of lumbar pain as the claimant does have some radiologic findings of concern, left shoulder pain, again with some radiologic findings, and memory difficulty for which depression is suspected to be a major factor. Examiner states that this assessment indicates that the patient is not currently fit for employment. There may be some remediability of the mental status which would open up the possibility for a light physical job assignment.

Psychiatric/Psychological Medical Report of December 22, 2009 indicates that the claimant alleges disability due to back problems, shoulder pain, memory problems and possible depression. Claimant did not have a primary care physician and was not using any prescription medication. Except for being treated for substance abuse on an inpatient basis “years ago at [REDACTED]”, claimant denied inpatient psychiatric treatment or outpatient therapy. Claimant reported staying at the mission or with a

female friend whom he helps with some household chores. Claimant also stated that he is walking around all day with a shuffling gait and a cane in 22 degree weather. The examiner found this difficult to believe. Claimant does not appear to be undernourished. He does have a shuffling gait with a cane which makes it difficult to believe he can walk around on the snow covered bumpy sidewalks of Muskegon. Claimant was in contact with reality but made very poor eye contact. His speech was organized, but he was very vague and needed repeated questioning to receive appropriate responses that answered examiner's questions. Claimant denied any suicide attempts, psychosis, paranoia, homicidal ideation, symptoms of an eating disorder and self injury as behavior.

Claimant's diagnosis was that of alcohol and cannabis dependence, unknown remission, depressive disorder and personality disorder NOS, psychosocial stressors including financial, occupational, homeless, and a GAF of 55-60. Claimant's prognosis is fair and evaluation shows he is able to understand, retain and follow simple instructions. The examiner believes he is capable of performing simple routine repetitive tasks, and he has done this in temporary employment situations but then claims his back hurts and does not show up for work. Claimant states he is having difficulty with employment because employers do background checks and he has multiple felonies. The examiner does not see that claimant's depressive symptoms are impairing his ability to understand and perform simple routine repetitive tasks.

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. Claimant has therefore met his burden of proof at this step and analysis continues.

At Step 3 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, claimant reports no work history for the last 15 years except for 2 months in the packaging plant in 2009. Determination that the claimant can or cannot do past relevant work cannot therefore be made, due to absence of work history.

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]... 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 is physically unable to do at least 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 sedentary and light work. Under the Medical-Vocational guidelines, an individual closely approaching advanced age (claimant is age 52), with high school education (claimant has 1 year of college) and an unskilled or no work history who can perform light work is not considered disabled pursuant to Medical-Vocational Rule 202.13.

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). It should be noted that while the claimant does have issues with his back according to radiological findings, his alleged depression is questionable and his confused mental state could be due to his substance abuse issues of which he was vague during psychological examinations. 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 and State Disability Assistance benefits. The claimant should be able to perform a wide range of sedentary and 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: December 1, 2010

Date Mailed: December 1, 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

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