

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: 2010-31985
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 19, 2010
Midland 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 19, 2010. 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 January 7, 2010, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On March 24, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work.
- (3) On April 12, 2010, the department caseworker sent claimant notice that his application was denied.
- (4) On April 15, 2010, claimant filed a request for a hearing to contest the department's negative action.

- (5) On April 30, 2010, the State Hearing Review Team also denied claimant's application stating he was capable of performing sedentary work per 20 CFR 416.967(a) and Vocational Rule 201.21.
- (6) Claimant is a 50 year old man whose birth date is [REDACTED]. Claimant is 6' 3" tall and weighs 230 pounds. Claimant completed high school and has an Associate Degree in applied science, and can read, write and do basic math.
- (7) Claimant states that he last worked in August, 2007 for a call center answering telephone questions about [REDACTED] automotive information for 4 years, job he was fired from due to his medical condition. Claimant has also worked for a car dealership for 25 years up to 2003 as an auto technician, until he found a better job.
- (8) Claimant states he did not receive UCB as he was disabled and not available for work, and that he has also worked with Michigan Rehabilitation Services in the past but they could not help him.
- (9) Claimant lives in a house with a friend who supports him and receives food stamps. Claimant has a driver's license but does not drive often, fixes simple meals, does no housework, and passes the time doing crossword puzzles, using the computer and watching TV.
- (10) Claimant alleges as disabling impairments rheumatoid arthritis, fibromyalgia, degenerative disk disease, sleep apnea, migraine headaches, restless leg syndrome, depression, and daily body aches and pain.
- (11) Claimant has applied for Social Security disability and been denied, and is appealing this 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 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.

to his past medical or surgical history. Claimant smokes one pack of cigarettes per day but denied any alcohol or illegal drug use. Claimant had been prescribed a multitude of pain medications but complains of pain at the level 7/10.

Claimant is independent in activities of daily living and ambulates without any gait aid, but stated he is having difficulty with grooming, dressing, bath activities and mobility. Physical examination revealed functional range of motion in the upper and lower extremities as in the trunk. Range of motion of the cervical spine is limited in all plains. Manual muscle testing is 5/5 throughout, sensory examination is unremarkable to light touch and pin prick for neuropathic deficits, and deep tendon reflexes are 2+ and symmetrical throughout. Claimant can walk with a normal stance swing as well as base of support, and can also walk on his heels and tippy toes.

Impression is that of chronic pain syndrome, fibromyalgia on clinical grounds, left thoracic scoliosis, acquired cervical torticollis, myofascial pain syndrome, and bilateral carpal tunnel syndrome on clinical grounds (positive Tinel's sign at both wrists).

Progress Note of October 6, 2009 states as claimant's chief complaints multiple joint pain and fatigue. Claimant was seen for a functional capacity evaluation for his disability claim. Diagnoses are that of history of rheumatoid arthritis, fibromyalgia, chronic pain syndrome secondary to these conditions, and status post C6-C7 anterior cervical discectomy and fusion. Claimant's primary complaints are severe pain in the elbows, wrists, shoulders, knees and ankles. He is unable to walk or stand more than five to ten minutes, and unable to return to his previous work.

Physical examination reveals multiple arthritis findings in most of the major joints of his upper and lower extremities. Claimant walks with an antalgic gait pattern. He has widespread tender points due to fibromyalgia, bilateral shoulder impingement, and cervical spine range of motion is limited due to pain. Examiner states that the claimant has multiple impairments causing significant disability. Rheumatoid arthritis and fibromyalgia are causing severe fatigue and frequent synovial inflammations of his weight bearing joints, muscle stiffness and joint pain. Claimant will be unable to tolerate even sedentary work, as he does not have the functional endurance to sit or stand more than 10 to 15 minutes at the time. He requires frequent rest breaks and has to lay down every half an hour to obtain relief from his joint pain. Claimant also requires strong opiate analgesics to control his pain and will probably have side-effects from these medications.

Psychological evaluation of April 9, 2009 for Disability Determination Service quotes the claimant as reporting his physical issues in addition to difficulty concentrating and poor memory. Claimant also reported feeling depressed for the past couple of months, which is helped with Cymbalta, but denied history of depression and any mental health treatment, psychiatric hospitalizations or substance abuse treatment. Examiner summarized that the claimant reported being unable to work due to multiple physical health problems, and that the depression that began approximately two months ago appears to be in partial remission, likely due to his use of medication. Claimant's work-

related functioning is not likely to be significantly impaired by his mental health symptoms. Based upon the information available, it is his physical health that significantly impacts his daily functioning, and if his physical symptoms were resolved and claimant returned to work, it is likely that the depressive symptoms would remit entirely. Diagnoses were that of major depressive episode, single episode, in partial remission and GAF of 60.

Psychological evaluation of March 5, 2010 indicates that the claimant has no cognitive impairment impeding his occupational functioning. His ability do to chores, care for himself, and drive independently evidences an ability to return to some kind of vocational functioning. Referral to Michigan Rehabilitation Services would be warranted for vocational re-training, and focusing efforts on increasing claimant's occupational functioning would actually be rehabilitative for his perception of his pain and for his perception of his ineffectiveness.

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. These impairments have lasted 12 months. Claimant has therefore met his burden of proof at Step 2 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, the Administrative Law Judge finds that the claimant does not have the ability to perform his past relevant work. Claimant's past relevant work was in a call center up to August, 2007. Medical evidence provided for this hearing indicates that the claimant cannot do even such a sedentary job due to his physical issues and medication he is on. Finding that the claimant is unable to perform work which he has engaged 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]... 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, and that he is physically unable to do even sedentary work if demanded of him. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does establish that claimant has no residual functional capacity to perform other work. Claimant is not disqualified from receiving disability at Step 5 based upon the fact that he has established by objective medical evidence that he cannot perform even sedentary work. Claimant is disabled for MA eligibility purpose.

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 meets the

definition of disabled under the MA-P program and because the evidence of record does establish that claimant is unable to work for a period exceeding 90 days, the claimant meets the disability criteria for State Disability Assistance benefits also.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly denied claimant's MA and SDA application.

Accordingly, the department's decision is REVERSED. Department shall:

1. Process claimant's disputed January 7, 2010 MA and SDA application and grant him any such benefits he is otherwise eligible for (i.e. meets financial and non-financial eligibility requirements).
2. Notify the claimant of this determination.
3. Review claimant's ongoing eligibility in December, 2011, at which time updated medical records are to be obtained.

SO ORDERED.

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

Date Signed: December 27, 2010

Date Mailed: December 27, 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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cc:

