

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: 2010-34546
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 29, 2010
St. Joseph 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, an in-person hearing was held on July 29, 2010. Claimant personally appeared and testified. Claimant was represented by [REDACTED],

[REDACTED].

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and retro MA?

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 September 16, 2009, claimant filed an application for Medical Assistance and retro MA benefits alleging disability.
- (2) On January 11, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work.
- (3) On January 14, 2010, the department caseworker sent claimant notice that his application was denied.

- (4) On April 14, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (5) On May 25, 2010, the State Hearing Review Team (SHRT) also denied claimant's application stating that the medical evidence of record indicates that he retains the capacity to perform a wide range of simple, unskilled, light work. Vocational Rule 202.13 was used as a guide in this decision.
- (6) Additional medical information was received following the hearing and forwarded to SHRT for review. On December 10, 2010 SHRT again denied claimant's application for the same reasons as May 25, 2010 decision. SHRT noted that the new information does not significantly change or alter the previous decision.
- (7) Claimant is a 51 year old man whose birthday is [REDACTED]. Claimant is 5'10" tall and weighs 185 pounds. Claimant completed high school but states he can only read and write on 4th to 5th grade level and do basic math.
- (8) Claimant states that he last worked in June, 2007 as a machine press operator in a factory, job he held for 90 days and that ended because his foot hurt too much and would swell. Claimant also worked at [REDACTED] as a merchandise stocker from 2001-2006 until he quit due to painful foot, and as a manager mechanic at a service station in the late 1990's.
- (9) Claimant stays at "couple of places", is helped by his family, and receives food stamps. Claimant does not have a driver's license.
- (10) Claimant alleges as disabling impairments high blood pressure, peripheral vascular disease, severe depression, confusion, and constant right lower leg 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).

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 since year 2007. 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 hospital admission for the claimant from June, 2009 with admitting diagnoses of deep venous thrombosis, chronic alcoholism, and mild metabolic acidosis. Claimant was put on seizure protocol for chronic alcoholism and never had any withdrawal symptoms. A urine drug screen was obtained and was positive for amphetamines, benzos, opiates and cannabis. Claimant was encouraged to refrain from use of illicit drugs and agreed to this. Claimant was treated for the venous thrombosis. He was also suffering from depression and was started on Zoloft, which lead to improvement in his symptoms at the time of discharge. Claimant also had hypertension and first denied any high blood pressure problems, but then admitted to it and that he had discontinued medication for it in the past. Claimant was given medication and his blood pressure was fairly stable at the time of discharge. Claimant was to stay with a friend and it was explained to him about the use of Coumadin for anticoagulation and the duration of this could be life long or would be at least for one year as this is his second deep venous thrombosis.

Medical Examination Report of August 21, 2009 indicates as claimant's current diagnoses elevated blood pressure, alcoholism and deep vein thrombosis. Claimant had difficulty walking and limping gait. It was noted that his depression was worsening. Claimant's condition was marked as stable, but he was limited in lifting/carrying 10 lbs. frequently, up to 25 lbs. occasionally, standing/walking less than 2 hours and sitting about 6 hours in an 8-hour workday. No assistive devices were medically required for ambulation. Claimant had no problems in using his hands/arms for repetitive actions, but could operate leg/foot controls only with his left leg. Claimant had no mental limitations.

Claimant was seen by the same doctor for a follow up on August 31, 2009 after he was hit by a car while riding his bike and has some injury to his right arm and his jaw.

████████████████████ of ██████████ quotes as claimant's complaints high blood pressure and peripheral vascular disease. Claimant's blood pressure was 142/90 in his right arm and 160/98 in his left arm. His gait was normal but he did have discoloration of his lower extremities, right greater than left, and did show signs of venous stasis dermatitis. Claimant's lungs were clear and the heart examination was within normal limits. His abdomen was non-tender and without distention. Peripheral pulses were easily palpated and symmetrical. There was ¼ pitting edema of the lower extremities, and he had mild tenderness of his lower extremities. Claimant had full range of motion and his hands had full grip and digital dexterity. Motor strength was 5/5 in all extremities. Reflexes were 2/4 throughout. Sensation was normal. Claimant did not exhibit any difficulty getting on and off the table, heel-toe walking, and squatting. There was no atrophy or fasciculation. Conclusion was that of normal heart sounds, but not well managed blood pressure, discoloration of lower extremities and skin findings suggestive of venous stasis dermatitis.

Psychological evaluation of October 26, 2010 quotes the claimant as saying he has become debilitated over the last ten years, since he became plagued with blood clots, mostly right leg, and seemingly resulting from a foot wound that has not healed. Claimant reported using alcohol several times per week and having 7 arrests for driving while intoxicated, but none since year 2000. Claimant has been involved in a treatment program for alcoholism or drug use in the past. Claimant's mannerisms were within normal limits, and he was talkative and cooperative with this assessment. Claimant's clothing was age appropriate and clean, and his hygiene was within normal limits. His motor activity was within normal limits, and his posture and presentation, although quiet, was socially acceptable. Claimant's speech was within normal limits, and he was articulate and easily understood. He was oriented to date, time, place person and reason, and his long term memory appeared intact. Claimant appeared to have no deficit in learning and maintaining new information, and no problem was noted with his immediate memory. No suicidal or homicidal ideation, no active hallucinations, and no delusions were reported.

Diagnoses include alcohol dependence (last drink approximately October 11, 2010), alcohol-induced mood disorder, and antisocial personality disorder. Claimant's current GAF is 70 and he is able to manage any benefit funds. No limitations were noted in areas of understanding and memory, concentration and persistence, social interaction, or adaption with the exception of the ability to set realistic goals or make plans independently of others.

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. This impairments, high blood pressure and peripheral vascular disease, have lasted 12 months. It is noted that no significant mental impairments are found. 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 would have to deny the claimant based upon his ability to perform past relevant work. Claimant's past relevant work was as a merchandise stocker at Wal-Mart from 2001 to 2006. Finding that the claimant is unable to perform work which he has engaged in the past cannot therefore be reached and the claimant is 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 insufficient objective medical evidence that he lacks the residual functional capacity to perform tasks from his prior employment, or that he is physically unable to do light work if demanded of him. Medical Examination Report indicates that the claimant is capable of such 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 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 51), with high school education and an unskilled 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 ability to do basic work activities. 20 CFR 416.920(c). However, 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.

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 retroactive Medical Assistance benefits. The claimant should be able to perform a wide range of light unskilled 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 22, 2010

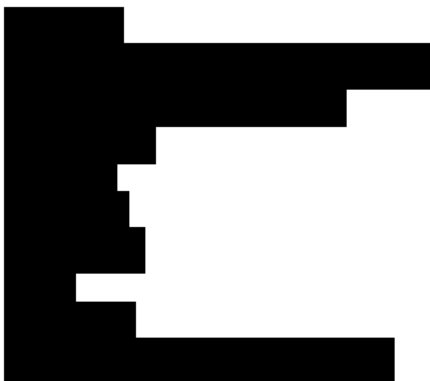
Date Mailed: December 22, 2010

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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