

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: 2010-34547
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 22, 2010
Eaton 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 June 22, 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), retro 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 December 30, 2009, claimant filed an application for Medical Assistance, retro MA and State Disability Assistance benefits alleging disability.
- (2) On April 2, 2010, the Medical Review Team (MRT) denied claimant's application citing insufficient medical evidence. MRT had previously requested that the department obtain an internist and psychiatric exam for the claimant; however claimant did not keep these appointments because he went back to jail.

- (3) On April 6, 2010, the department caseworker sent claimant notice that his application was denied.
- (4) On April 12, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (5) On May 24, 2010, the State Hearing Review Team (SHRT) also denied claimant's application stating he was capable of performing work, namely medium unskilled work per Vocational Rule 202.20.
- (6) Claimant re-applied for MA, retro MA and SDA on April 27, 2010, and exams previously requested by MRT were conducted. On June 18, 2010 MRT denied claimant's most recent application stating he was capable of other work per Medical/Vocational Grid rule 202.20.
- (7) Additional exams were submitted to SHRT for review. On June 23, 2010 SHRT denied claimant's application again stating he was capable of medium unskilled work.
- (8) Claimant is a 46 year old man whose birthday is [REDACTED]. Claimant is 5'9" tall and weighs 215 lbs. Claimant completed 12 grade and can read, write and do basic math.
- (9) Claimant stated that he last worked in June, 2009 part time at a party store as a cashier and stocking shelves, job that lasted him 6 months and that he quit due to injury. Claimant further stated that he has been a factory worker all his life until the company he worked for shut down.
- (10) Claimant lives with his wife who receives UCB and food stamps. Claimant has a driver's license but no vehicle, and walks or uses E-Tran to get around.
- (11) Claimant alleges as disabling impairments back pain from a broken back in June, 2009, seizures that caused him to fall down and that started in the last 5 years, glaucoma, ADD, depression disorder diagnosed in 2000 and caused by many years of drug abuse as he was self-medicating, and personality disorder.
- (12) 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 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 June, 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 July 3, 2009 CT of claimant's brain due to a seizure. No acute intracranial disease process and no depressed skull fracture was seen. CT of claimant's neck and shoulder of the same date due to the claimant complaining of shoulder and neck pain was normal with no evidence of fracture, subluxation or locked facet.

August 20, 2009 MRI of claimant's thoracic spine was taken due to injury and back pain and with comparison to the CT scan of the thorax dated July 26, 2009. Impression is that of stable, nonrecent compression deformities of the T4 and T5 vertebral body, no fracture fragments and no evidence of central canal stenosis. There are findings suggestive of a noncancerous tumor of the C7 vertebral body, and disc desiccation and small left paracentral disc protrusion at T8-T9 causing no central canal stenosis or neuroforaminal narrowing.

Medical Examination Report of September 2, 2009 indicates that the claimant suffers from compression fractures of T4/T5 resulting from heat stroke fall in July, 2009. Claimant's diagnoses also include ADD and glaucoma. Claimant had "severely" decreased range of motion, was in obvious pain and was wearing a brace to stabilize neck and thoracic spine in place. Claimant was also very depressed due to pain and financial issues. Doctor indicated that the claimant could not lift any amount of weight and could not use his hands/arms or feet/legs for any type of repetitive action.

December 20, 2009 x-ray of claimant's thoracic spine indicates chronic compression fractures of T4 and T5 appearing unchanged from October 12, 2009.

Claimant's record shows that he was in the hospital emergency room on several occasions with complaints of back pain so he could get medication to relieve the pain.

Internal medicine exam of February 22, 2010 quotes the claimant as saying his main disability is related to problems with his back caused by a fall with some type of seizure in August, 2009. Claimant's current medication was drops for his glaucoma. Physical exam was normal with the exception of tenderness over the mid thoracic vertebrae and tenderness and tightness of the right thoracic paraspinal muscles and the right rhomboid muscle. Claimant had good range of motion in all joints and there was no tenderness or inflammation in any of the joints noted. Claimant was alert and oriented to time, person and place, his cranial nerves were grossly intact, and motor exam showed normal power and tone throughout, Sensory exam was within normal limits, deep tendon reflexes were 2+ and equal bilaterally, cerebellar function was intact, and gait was normal. Examiner concludes that the claimant should not be doing any lifting more than 10 pounds nor should he be doing any repetitive bending or twisting, due to the tenderness in the mid thoracic vertebrae as well as the right thoracic paraspinal muscles.

Medical Examination Report of April 22, 2010 cites as claimant's chief complaint back pain. All of claimant's examination areas as marked as normal except for musculoskeletal with remarks that cannot be read. Claimant's condition is marked as stable, but he is limited in lifting/carrying up to 10 lbs. frequently and 20 lbs. occasionally. Claimant can stand, walk and sit about 6 hours in an 8-hour workday, and has no limitations in using his hands/arms and feet/legs for repetitive actions. Claimant is on Adderall and Percocet and can meet his needs in the home without assistance.

Psychological evaluation of May 26, 2010 states that the claimant has a history of drug abuse since the age of 15, that he has been in four different drug rehabilitation programs, and that he has also received outpatient psychological treatment for his depression. Claimant stated that he has used marijuana, cocaine, heroin, LSD and alcohol over the years, but has “basically been drug-free since 2006”. Claimant went on to say he has used cocaine and other drugs “sometimes” since then, but claims he has significantly reduced his drug usage and is trying to reduce it to zero drug usage. Claimant also stated that he has a history of six felonies and has been incarcerated at least seven years; that he was released from prison in December, 2008 and from jail in April, 2010. Claimant’s longest period of sustained employment was working for 12 years as a supervisor in a “molding factory”. Claimant acknowledged that over the years he has been fired from numerous jobs because of his drug usage, missed work, and conflicts with others.

Examiner states that the results of the evaluation show that the claimant exhibited average cognitive capabilities and appears to have unimpaired capabilities to understand, retain, and follow simple instructions and to perform and complete simple tasks. Claimant appears to have severely impaired capabilities to interact appropriately and effectively with co-workers and supervisors, and to adapt to changes in the work setting. It is suspected that claimant’s severe depression and underlying personality disorder would result in moderately impaired capacity to do work-related activities. Diagnostic impressions include major depressive disorder, recurrent, cocaine dependence, possibly in remission, ADHD, combined type, by history, personality disorder with mixed features, and a current GAF of 51. Claimant’s prognosis is poor as he is in need of ongoing substance abuse treatment and psychological treatment.

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’s 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 could deny the claimant based upon his ability to perform past relevant work as a cashier in a party store, which would be simple work that he could perform even with his medical and psychological issues. Claimant performed such work for 6 months in 2009 until he injured his neck and back. Claimant’s past work history, at least in this century, is impacted by his periods of incarceration, making it difficult to determine what other kind of work claimant has done that he could perform again.

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 sedentary work if demanded of him. The most current Medical Examination Report states that the claimant does not have physical limitations which would preclude such work, and the psychological report indicates that the claimant is capable of following simple instructions. It is noted that the claimant certainly has other

psychological issues that have impacted his employment, very likely caused by his long history of drug abuse which appears not to have ceased completely. However, such issues do not rise to the level of making the claimant incapable of doing any type of other 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, a younger individual age 45-49 (claimant is 46), with high school education and work history of not transferable past skills who can perform only sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.21.

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). 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.

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 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 8, 2010

Date Mailed: December 8, 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.

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