

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No: 2010-3492
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 25, 2009
Berrien County DHS

ADMINISTRATIVE LAW JUDGE: Ivona Rairigh

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on November 25, 2009. 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 March 27, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On August 5, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On August 17, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On August 28, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On October 30, 2009, the State Hearing Review Team (SHRT) again denied claimant's application stating that he retains the ability to perform light exertional tasks of a simple and repetitive nature. SHRT further stated that using Vocational Rule 202.17, the claimant would retain the ability to remain gainfully employed.

(6) Claimant presented additional medical information following the hearing that was forwarded to SHRT for additional review. On December 9, 2009 SHRT again determined that the claimant is not disabled, as he is capable of performing light unskilled work per Vocational Rule 202.17.

(7) Claimant is a 42 year old man whose birthday is May 7, 1968. Claimant is 5'11" tall and weighs 314 pounds. Claimant dropped out of school in 8th grade and does not have a GED, but can read, write and do basic math.

(8) Claimant states that he last tried to work in 2009 for his brother's pool service, but could not do the work as his back went out on him. Claimant also worked in 2001 for a lawn service for 4 months, job he quit after he stepped in a hole in the yard. Claimant also used to be a truck driver until he had an accident and became too scared to drive, and in construction until he hurt his back in 1997.

(9) Claimant was married and living with his wife until he separated from her. Claimant currently lives with his parents and receives food stamps. Claimant has no driver's license due to suspension resulting from two DUI offenses in 2004 or 2005.

(10) Claimant alleges as disabling impairments: back problems, numbness in his legs that is there most of the time, adult ADD, mood and personality disorder, and bi-polar disorder with severe depression.

(11) Claimant had applied for Social Security disability, had a hearing on the initial denial of this application in December, 2009, and received an unfavorable decision from a Social Security Administration Administrative Law Judge in February, 2010, according to information received from SHRT. Claimant has re-applied for Social Security disability in June, 2010.

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 one, 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 two, 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 three, the Administrative Law Judge must determine whether the claimant's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the claimant's impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement (20 CFR 404.1509 and 416.909), the claimant is disabled. If it does not, the analysis proceeds to the next step.

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

Next, the Administrative Law Judge must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his/her past relevant work (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as the claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the claimant to learn to do the job and have been SGA

(20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If the claimant has the residual functional capacity to do his/her past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g), the Administrative Law Judge must determine whether the claimant is able to do any other work considering his/her residual functional capacity, age, education, and work experience. If the claimant is able to do other work, he/she is not disabled. If the claimant is not able to do other work and meets the duration requirements, he/she is disabled.

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

At Step 1, claimant is not engaged in substantial gainful activity and testified that he has not worked since year 2001, except for a brief trial period 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 an MRI of claimant's lumbar spine of March 6, 2008 which shows a significant developmental spinal canal narrowing, and mild to moderate joint disease.

[REDACTED]
[REDACTED] for diagnosis of lumbar radiculitis states that the claimant has chronic pain involving his low back. Claimant was given an epidural injection without any complications, and is to be followed up in about a week. Claimant was also to start in focused physical therapy. Claimant was seen on February 4, 2009 and reported that he is much better with Norco medication. Claimant did complain of pain in his back that varied with activity.

August 20, 2009 MRI of claimant's lumbar spine for history of chronic low back pain, leg numbness and weakness indicates that claimant has multilevel spinal stenosis primarily due to posterior epidural fat, L4-L5 disk degeneration with posterior edema, consistent with annulus tear, and narrowing of the L5-S1 neural foramina.

[REDACTED] visit report states that the claimant was seen due to having problems with increased pain located over the lumbosacral spine at waist level radiating left and right in a bandlike pattern. Claimant reported issues with balance and falling and numbness in the lower extremities, and that his lower extremities tend to become numb if he is on his feet for any length of time. Claimant's vital signs were stable, he is alert and oriented and ambulated independently. Claimant was using a cane and while his gait was

somewhat cautious he was steady on his feet. He was able to heel and toe walk with the cane.

Claimant's Patellar and Achilles' reflexes are all 2+ bilaterally, strength in the lower extremities is 5 out of 5 bilaterally in hip flexion, knee flexion and extension, plantiflexion, and dorsiflexion.

Claimant had intact sensation to pinprick in the lower extremities except of some decreased sensation on the lateral side of the left foot and over the lateral and medical right calf.

Claimant's pedal pulses were strong, regular and equal. Claimant's Neurontin was increased.

[REDACTED] quotes the claimant as saying he is depressed and has anxiety, and has recently had suicidal thoughts. Claimant reported being separated from his wife for a little over a year. Claimant stated he has dizzy spells, frequent headaches, nervous breakdown, hay fever, shortness of breath, fainting, arthritis, and pain of 10 on the pain assessment scale due to lower back pain. Claimant was taking Zoloft, Adderal, Vicodin, Naprason and Imetrex as prescribed by his family doctor. Claimant was well-dressed, well-groomed and had good hygiene. Claimant was friendly and cooperative, his thought processing was lucid/rational, his speech was coherent, normal volume and speed, his cognition normal, his attention good and his memory was intact. Claimant was oriented to person, place, time and circumstance/situation, no perceptual disturbances were noted, and there was no suicidality or homicidality present.

Claimant reported being charged with driving under the influence of controlled substance (marijuana) and that the charges are pending. Claimant also reported that he had obtained his high school diploma last June.

Claimant was diagnosed with depressive disorder NOS, anxiety disorder NOS, cannabis abuse in remission since 2001, and a GAF of 55. Claimant would benefit from outpatient therapy by alleviating symptoms of depression and reducing symptoms of anxiety.

Psychiatric Evaluation of March 31, 2008 indicates that the claimant is depressed about his relationship with his wife as they are separated. Claimant indicated that Adderall has been quite helpful for his focus and attention, and that he was able to complete his high school diploma last year and feels positive about this. Claimant denied obsessive compulsive problems, thought disorder symptoms, and manic symptomatology. Claimant also denied alcohol or marijuana use for the last several years. Mental status examination showed that claimant's speech was within normal limits, he was cooperative with the examination, his mood was somewhat down, but his affect was full range with smiling at times. Claimant was alert and oriented x3, and of average intelligence based on vocabulary. Claimant's thought processes were logical and sequential, he denied auditory or visual hallucinations, suicidal or homicidal ideation, and his judgment and insight appeared okay. Claimant's Zoloft was to be increased and Adderall dosage reduced.

June 11, 2008 psychiatric visit states that the claimant complains of confusion related to his ADHD, as about a week ago his parent's house was broken into and his meds were missing. Claimant was in no acute distress, logical, and with no gross signs of psychosis. Claimant was told a police report would be needed in order to replace his Adderall, otherwise he would have to wait until his prior prescription ran out.

October 2, 2008 medication review quotes the claimant as saying he has been taking the Depakote 500 mg. and is having less panic and no headaches, but doesn't feel it is doing anything for his depression or irritability. Claimant appeared as well nourished, well developed, well groomed, pleasant and cooperative, and in no acute distress. His speech was clear, not pressured, and he had no tremor and no rash.

October 30, 2008 medication review indicates that claimant reported he had a bit of a slump last week, but that this is his typical pattern, as about every 3 months he has one of these episodes. Claimant was doing better the last few days.

At January 15, 2009 medication review claimant reported that his medication is good at controlling his anger and ruminations, he does not feel he needs an antidepressant, but he did complain about low motivation. Claimant described his mood as “better” and denied any homicidal or suicidal ideation, or psychosis. His insight and judgment seemed grossly intact.

Medical evidence has clearly established that claimant has an impairment (or combination of impairments) that has more than a minimal effect on claimant’s work activities. See Social Security Rulings 85-28, 88-13, and 82-63. Analysis therefore proceeds to Step 3.

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 it questionable that the claimant would be able to perform past relevant work. Claimant’s past relevant work was driving a truck and laborer type jobs. Claimant’s back issues would most likely prevent the claimant from performing laborer jobs involving heavy lifting, standing and walking. Finding that the claimant is unable to perform work which he has engaged in in the past can therefore be reached and the claimant is not denied from receiving disability at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform other jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the [REDACTED], published by the [REDACTED] [REDACTED]... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

While the claimant has back issues that would prevent him from performing laborer jobs, the psychological evidence he presented does not establish that he has a mental condition which would prevent him from doing any type of a job. 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 at least sedentary work. Under the Medical-Vocational guidelines, a younger individual age 18-44 (claimant is 42 years of age), with limited education (claimant's record shows he has a high school diploma even though he testified at the hearing that he does not) and an unskilled or no work history who can perform only sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.27.

In conclusion, although the claimant has medical problems, the clinical documentation submitted by the claimant is not sufficient to establish a finding that the claimant is disabled. There is no objective medical evidence to substantiate the claimant's claim that the alleged impairment(s) are severe enough to reach the criteria and definition of disabled. The claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

The department's Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, page 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of at least sedentary work even with his alleged impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED, and it is SO ORDERED.

/s/

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

Date Signed: August 31, 2010

Date Mailed: August 31, 2010

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

IR/tg

cc:

