

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: 2010-35241
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 16, 2010
Ingham 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 16, 2010. Claimant personally appeared and testified along with a friend [REDACTED]

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 February 5, 2010, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On April 23, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On April 26, 2010, the department caseworker sent claimant notice that his application was denied.

(4) On May 4, 2010, claimant filed a request for a hearing to contest the department's negative action.

(5) On May 26, 2010, the State Hearing Review Team (SHRT) again denied claimant's application stating that he retains the capacity to perform a wide range of light exertional work of a simple and repetitive nature. SHRT further stated that the claimant is unable to reach overhead with the left upper extremity and should be employed in a position where there is very limited exposure to the general public, co-workers and supervisors.

(6) Claimant is a 54 year old man whose birth date is June 7, 1956. Claimant is 5'6" tall and weighs 180 pounds. Claimant attended the 10th grade and does not have a GED. Claimant is not able to read or write well, and does have basic simple math skills.

(7) Claimant states that he last worked in 2008 as a fork lift truck driver in a warehouse, job he was laid off from and then received UCB. Claimant has also worked as a concrete finisher for 7 years and has been in construction work all of his adult life.

(8) Claimant states that he currently lives with his sister and receives food stamps, and that his sister and mother have been helping him financially. Claimant does not have a driver's license due to a 2006 DUI conviction. Claimant goes grocery shopping either with his sister or by taking a bus, and does some house cleaning but cannot do any outside work due to wrist and shoulder pain.

(9) Claimant alleges as disabling impairments: left shoulder spurs, cyst on left wrist, carpal tunnel-like pain in his left wrist, knee and back pain, bipolar disorder, attention deficit hyperactivity disorder (ADHD), and reading/writing disorder.

(10) Claimant has applied for Social Security disability and his claim is pending.

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 2008. 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 the claimant's left shoulder of January 28, 2010, showing significant degenerative changes.

General internal medicine exam of March, 2010 quotes the claimant as saying his main disability is related to problems of the left shoulder, the lower back and the left knee. Claimant stated that he has been having some problems with the left shoulder fairly recently, although he has not had any specific injury, and that the shoulder joint will pop frequently, especially with movement. Claimant also stated that he has had problems with his lower back since his 30s.

Physical examination revealed a well-developed, well-nourished male in no acute distress. Claimant's blood pressure was 120/84 and pulse 84 and regular. Claimant had no back tenderness and his range of motion was within normal limits. Extremities showed no cyanosis, clubbing or edema, and there were good peripheral pulses palpated distally. Claimant did have tenderness over the anterior and lateral aspects of the left shoulder, and decreased range of motion with abduction being 90 degrees. Rotator cuff tendons were intact to strength testing, but there was some discomfort with cross over. There was no other evidence of inflammation or tenderness of the joints.

Neurologically, claimant was alert and oriented to time, person and place. Motor exam showed normal power and tone throughout, sensory exam was within normal limits, and deep tendon reflexes were 2+ and equal bilaterally. Claimant's gait was normal.

Assessment was that of left shoulder pain and the claimant should not be doing anything over his shoulder level nor should he be doing any heavy lifting more than 15 pounds. As far as claimant's reported back pain, he did not have any significant tenderness on exam today, his range of motion was normal and no evidence of radiculopathy was found.

Psychological evaluation of March 31, 2010 quotes the claimant as saying he had been in many fights over the years, arrested and jailed on many occasions for assaultive behavior, and that he has a lifetime of anger and aggressive behavior. Claimant further stated that he had hit someone just "last night". Claimant had no history of inpatient psychiatric treatment. Testing indicates that the claimant has limited cognitive abilities, a severe reading disorder (at the 2nd grade level) and arithmetic ability at the 3rd grade level. These results indicated that the claimant could not function in vocational settings in which academic skills were utilized. Throughout the evaluation claimant exhibited intensity, pressured speech, restlessness, distractibility, anger,

aggressiveness, and a significant lack of concern for the consequences of his behavior. Claimant did not exhibit evidence of illogical, bizarre or circumstantial ideation, his thought processes appeared well organized and coherent, and no evidence of a thought disorder was seen. Claimant also did not exhibit evidence of hallucinations, delusions, or obsessions, and he denied suicidal ideation. Claimant did not report significant levels of depression, although he acknowledged that he is “not happy”. Claimant appeared 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 limitations would result on moderately impaired capacity to do work-related activities.

Claimant’s diagnostic impressions are that of a reading disorder, intermittent explosive disorder, antisocial personality disorder, borderline intellectual functioning, medical problems and psychosocial stressors. Claimant’s GAF was 50, he was capable of managing his own funds, but his prognosis was poor.

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 met his burden of proof at Step 2 and analysis continues 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 that the claimant is not able to perform his past relevant work. Claimant's medical record indicates that he is limited to lifting up to 15 pounds and that he cannot reach overhead with the left upper arm. Claimant's past work was as a concrete finisher, fork lift truck driver and in construction, all fairly intense labor jobs that would require lifting and reaching. Claimant is not disqualified 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).

Claimant has submitted sufficient objective medical evidence that he lacks the residual functional capacity to perform tasks from his prior employment. Claimant is physically unable to do more than light work if demanded of him, according to the medical evaluation. However, an individual closely approaching advanced age (claimant is 54 years of age), who is illiterate (claimant has a severe reading disorder and his reading was evaluated at a 2nd grade level) and has only performed unskilled or no work in the past is considered disabled according to Vocational Rule 202.09.

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). The clinical documentation submitted by the claimant is sufficient to establish a finding that the claimant is disabled. There is 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 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 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, retro MA and SDA application.

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

1. Process claimant's disputed February 5, 2010 MA, retro MA and SDA and grant him any such benefits he is otherwise eligible for (i.e. meets all financial and non-financial eligibility requirements).
2. Notify the claimant of this determination.
3. Review claimant's ongoing medical eligibility in November, 2011, at which time updated medical records are to be provided. Claimant is advised he must follow all recommended medical and psychological treatments, or his MA and SDA eligibility may end.

SO ORDERED.

/S/

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

Date Signed: November 3, 2010

Date Mailed: November 3, 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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