

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: 2010-44603
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 2, 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, an in-person hearing was held on September 2, 2010. Claimant personally appeared and testified. Claimant was represented by [REDACTED].

ISSUE

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

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 October 16, 2009, claimant filed an application for Medical Assistance and retro MA benefits alleging disability.

(2) On April 26, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work and using Medical/Vocational Grid Rule 201.21 as a guide.

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

(4) On July 26, 2010, claimant filed a request for a hearing to contest the department's negative action.

(5) On August 3, 2010, the State Hearing Review Team again denied claimant's application stating that he retains the capacity to perform a wide range of sedentary exertional work per Vocational rule 201.21.

(6) Claimant is a 46 year old man whose birthday is [REDACTED]. Claimant is 5'8" tall and weighs 110 pounds after losing 8 lbs. since January, 2010. Claimant has a high school diploma and can read, write and do basic math.

(7) Claimant states that he last worked in 1996 and has not worked since then due to medical problems. Claimant has been helped by his family and friends, currently lives at a friend's house and receives food stamps.

(8) Claimant does not have a driver's license as he lost it in 1996 due to a DUI offense. Claimant is helped with cooking, does not grocery shop or clean his home and does not do any outside work. Claimant mainly stays indoors and sits around watching TV as he has daily hip pain.

(9) Claimant states he showers by hanging onto a rail, needs help to get dressed, can sit for 10 minutes, stand for 1-2 minutes, walk less than half a block and cannot bend or squat.

(10) Claimant alleges as disabling impairments crushed hip with deformity of left femoral head, uneven leg length, arthritis, anemia, fatigue and peripancreatic edema.

(11) 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).

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 1996. 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 record from July, 2009 stating that the claimant was admitted with a diagnoses of acute pancreatitis likely secondary to ETOH abuse, fevers and chills of unclear etiology, and shortness of breath on exertion. CT of claimant's abdomen and pelvis showed some mild peripancreatic edema at the tail of the pancreas. Also noted were extensive degenerative changes of the hips with deformity

particularly of the left femoral head and left hip socket. Claimant agreed to quit drinking and his shortness of breath improved. Claimant was discharged in stable condition several days later.

Medical evaluation of April 13, 2010 quotes the claimant as saying that his chief complaint is bilateral hip pain, and that he began having hip problems in 1996. Claimant stated his hip issues have become more problematic and he can barely walk 50 paces before he needs to sit down and rest. He has a significant antalgic gait and has a cane which may or may not help him. Claimant has pelvic asymmetry with the left hip higher than the right hip and right lower leg significantly longer than the left. Claimant also has mild lumbar scoliosis and states his right lower leg feels "dead". It has been noted in previous evaluations that the claimant has stocking-glove paresthesias, peripheral nerve disease, of the right lower leg, and this is indeed affirmed. Previous evaluation also noted atrophy of the left thigh which the examiner would also affirm today.

Examiner states that another concern is that the claimant weighed 154 lbs. when he was seen by another doctor in 2002, but his weight was documented to be 108 lbs. in 2004. His weight today is 110 lbs. Claimant stated that he has a great deal of difficulty preparing food or standing to do this, and only eats if the friend he lives with brings him food. Claimant appears of abnormally low weight, weak and in general bodily decline, and he significantly underweight.

Claimant reported living in a house with stairs and having a great deal of difficulty ambulating. Claimant's clothes were significantly larger than they should be and his jeans were barely hanging on his frame. On physical examination claimant had significantly decreased range of motion of both hips with virtually no inversion, eversion, adduction or abduction of the hip. Flexing to right and left clearly caused the claimant some pain.

Assessment is that of progressive orthopedic issues involving advanced degenerative joint disease of both hips which has also resulted in atrophy and decreased sensation and concern is voiced regarding some type of central spinal process. Additionally, the claimant's severe underweight and presumed some element of malnutrition, and it is uncertain if this is related to the claimant not getting enough to eat or if he has another underlying illness causing this profound weight loss. Orthopedic consultation and primary care practitioner consultation is strongly recommended.

New medical in file provided by State Hearing Review Team is an examination report of January 18, 2010. Claimant reported eating well but still losing weight, that he was 140 lbs. about a year ago but is not down to 118 lbs. Claimant had a prominent limp on the left leg due to it being 2" shorter than his right leg. He could not balance to heel, toe, or tandem walk even with the cane due to the left leg inequality. Claimant is not safe walking without the cane. He transfers in and out of the chair and steps onto the scales leading with the right foot and holding the cane in the left hand for balance. Conclusion is that of advanced arthritis at the left hip. Even with a full hip prosthesis claimant will have to walk with the cane due to leg inequality. He cannot do most of the exercises on DDS form unless he is sitting down.

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 impairment has lasted 12 months or more. 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 claimant has not worked since 1996. Therefore, this Administrative Law Judge cannot determine that the claimant is capable of past relevant work.

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 is physically unable to do even sedentary work if demanded of him. Claimant has very serious physical issues that would prevent him from performing anything but sedentary work. This was an in-person hearing and the Administrative Law Judge therefore had the opportunity to view the claimant during the hearing. Claimant is extremely thin and had to stand up several times even during the hearing, which took perhaps 30 minutes. Claimant appeared uncomfortable sitting down even for such brief period of time and reported he is in daily pain from his physical issues and must change positions frequently, and can only sit for about 10 minutes and stand for 1 to 2 minutes.

Claimant appeared very credible and was not exaggerating his condition. Therefore, this Administrative Law Judge finds that the claimant would not even be able to perform sedentary

work, as such work would not allow him to get up and down every few minutes. Claimant is therefore not denied at Step 5.

In conclusion, 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.

DECISION AND ORDER

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

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

1. Process claimant's disputed October 16, 2009 MA and retro MA application and grant him any such benefits he is otherwise entitled to (i.e. meets financial and non-financial eligibility requirements).
2. Notify the claimant of this determination.
3. Review claimant's ongoing medical eligibility in December, 2011, at which time updated medical records are to be provided

SO ORDERED.

/S/

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

Date Signed: November 10, 2010

Date Mailed: November 10, 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.

cc:

