

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: 2010-672
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 4, 2009
Lake 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 4, 2009. Claimant personally appeared and testified. Also appearing and testifying on claimant's behalf was his grandfather [REDACTED] and his mother [REDACTED].

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 July 13, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On August 13, 2009, the Medical Review Team denied claimant's application stating that claimant had a non-exertional impairment.

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

(4) On August 20, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On October 8, 2009, the State Hearing Review Team (SHRT) again denied claimant's application stating that the medical evidence of record indicates that the claimant retains the capacity to perform a wide range of unskilled work avoiding unprotected heights and dangerous moving machinery. Vocational Rule 203.28 was used as a guide.

(6) Claimant presented additional medical information following the hearing which was forwarded to SHRT for additional review. On January 5, 2010 SHRT once again determined that the claimant was not disabled as he could perform unskilled medium work, with limits in working around unprotected heights and dangerous machinery.

(7) Claimant is a 36 year old man whose birthday is June 25, 1974. Claimant is 5'11" tall and weighs 163 pounds. Claimant has a GED and can read, write and do basic math.

(8) Claimant states that he last worked in 2008 on a farm, cutting wood, driving truck, and hauling pulp wood, jobs he held for 10 years. Claimant states the job ended due to seizures but then also states he was fired. Claimant has also worked in an oil change business in the 1990's.

(9) Claimant currently lives in a camper on his parents' property, receives some financial help from his family and gets food stamps. Claimant testified that he cannot perform

any jobs due to seizures, most recent one being the night before the hearing, that drinking alcohol was helping control the seizures, but that he is now on medications for them.

(10) Claimant does not have a driver's license due to two DUI offenses, last one being 2 ½ years ago. Claimant cooks microwave meals, grocery shops with his family, does light housework, and rakes leaves when he is not feeling a seizure coming on. Claimant states he no longer smokes and has not used alcohol in the last 6-7 weeks.

(11) Claimant alleges as disabling impairments seizures, MRSA in his right index finger, knee cap problems and arthritis.

(12) Claimant has applied for Social Security disability and been denied, and is appealing this decision.

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. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments does not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

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).

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).

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).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).

5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

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, claimant has the burden of proof of establishing that he has a severely restrictive physical or mental impairment or a combination of impairments that is “severe”. 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).

The objective medical evidence on the record includes an October, 2007 PA visit was for recurrent MRSA infections in claimant’s right index finger for which he was treated.

December, 2008 ER record states that the claimant drank vodka and had a seizure. CT scan of claimant’s head revealed no evidence of intracranial abnormalities with cranial bones intact, and with evidence of acute sinusitis. May, 2009 CT of claimant’s brain was unremarkable.

May 6, 2009 doctor visit indicates that claimant presents with chronic alcoholism counseling and discussion. Alcohol has been a long term problem for the claimant and he very much wants to stop. Claimant finds himself with much more frequent seizures when he drinks and he even feels driven to drink to avoid the withdrawal seizures that he experiences. Tobacco

and other issues that affect Dopamine are also present here. Claimant's vitals were stable, his blood pressure 128/72, heart regular, lungs clear, and extremities without edema. Assessment was that of chronic alcoholism, seizure disorder and tobacco usage. Claimant was interested in Antabuse therapy.

Claimant was again seen on June 12, 2009 and it is noted that he continues to reach for a lot of cigarettes when he is anxious in addition to alcohol. Claimant is smoking up to 2-3 packs per day, is now back to about a pack per day but this is certainly impacting his recurrent seizure episodes. Claimant's Dilantin level was within normal limits. He has had some beer this past week but no by history excessive binges.

At July 13, 2009 doctor visit claimant reported having some aura of seizures that do not progress to a full-blown seizure, but that he did have a grand mal type seizure yesterday. Claimant stated he is down from 50 cigarettes per day to about 5, and his seizure events are secondary to nicotine withdrawal syndrome. Assessment includes seizure activity, alcoholism, dysthymia, nicotine addiction and withdrawal syndrome.

At July 27, 2009 doctor visit claimant reported not having alcohol in 5-6 weeks, trying to reduce tobacco, caffeine, and gain good dietary habits. Relations with his family are improving and stress levels are down. Claimant did have a seizure event over the weekend but there can be some challenges as his body seeks to make adjustments to its adaptation over time. Claimant is using Phenobarbital and Dilantin without side effects and he appears to be on the right road. He needs further tobacco reduction and continued activity, but is making good progress over time by history.

At August 26, 2009 doctor visit claimant reported being down to about 6-8 cigarettes per day, trying to avoid caffeine, and having no alcohol. Claimant has found that alcohol usage dose prevents the seizures. Claimant's vital signs are stable.

At September 30, 2009 doctor visit claimant smelled of alcohol greatly, but stated his seizures have been a little bit less frequent, with the last one being about three days ago. Doctor suspects that both tobacco and caffeine use is prominent.

At October 13, 2009 doctor visit it is noted that the claimant is making great progress, both emotionally and spiritually. Claimant's vital signs are stable and he looks markedly better than on his previous visit. Claimant is taking Librium and Valium.

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 has therefore met his evidentiary burden at Step 2 and analysis 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. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. 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 may not be able to perform his past relevant work. Claimant's past relevant work was working on a farm cutting wood and driving truck, activities which involve machinery use dangerous in case of a seizure.

Finding that the claimant is unable to perform work which he has engaged in in the past could 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).

Claimant has submitted insufficient objective medical evidence that he is physically unable to do at least medium work if demanded of him. 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's medical record does indicate that his seizures are improving if he abstains from alcohol and tobacco abuse. Claimant testified that he last used alcohol 6-7 weeks prior to the hearing, but that he had a seizure the night before the hearing. Claimant's medical record indicates that he has told his doctor repeatedly that he had quit drinking several weeks ago, but then he smelled strongly of alcohol on one of the visits. Claimant's assertion that he quit drinking is therefore questionable. CT scan of claimant's brain does not show any abnormality that would cause his seizures, and his doctor's opinion appears to be that the seizures are caused by alcohol and tobacco abuse, or withdrawals from the same when the claimant tries to reduce use. Claimant should avoid working around unprotected heights and dangerous machinery, but would be able to perform unskilled medium work, as he has no other physical limitations. 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 light,

sedentary and medium work, or possibly even heavy work. Under the Medical-Vocational guidelines, a younger individual (claimant is age 36), with high school education (claimant has a GED) and an unskilled or no work history who can perform medium work is not considered disabled pursuant to Medical-Vocational Rule 203.28.

The claimant has not 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 prevent him from doing any type of work. Although the claimant has cited medical problems and his seizures would result in some restrictions in the work environment, 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 light, sedentary and medium 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: June 30, 2010

Date Mailed: July 1, 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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