

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: 2010-98  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
November 3, 2009  
Muskegon 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 3, 2009. Claimant personally appeared and testified. Also appearing and testifying on claimant's behalf was his friend T. C.

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 2, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On June 26, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On July 9, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On August 18, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On October 9, 2009, the State Hearing Review Team (SHRT) again denied claimant's application stating that he retains the ability to perform sedentary tasks which are of a simple and repetitive nature, and that these limitations would preclude returning to past relevant work. SHRT used Vocational Rule 201.18 as a guide.

(6) Claimant presented additional medical information following the hearing which was forwarded to SHRT for additional review. On November 18, 2009 SHRT again denied claimant's application due to insufficient evidence and requested the department provide a physical and psychiatric examination for him.

(7) Additional exams were received and provided to SHRT. On January 7, 2010 SHRT once again denied claimant's application stating he was capable of performing light unskilled work with restriction in over head reach of the upper extremities, and used Vocational Rule 202.17 as a guide.

(8) Claimant is a 47 year old man whose birth date is January 22, 1963. Claimant is 5'8" tall and weighs 146 pounds. Claimant attended the 11<sup>th</sup> grade and does not have a GED. Claimant is not able to read or write well, but can handle basic math.

(9) Claimant states that he last worked in August, 2008 as a carpet cleaner, self-employed and for a cleaning service, type of job he performed for the last 20 years. This job

ended because the company went out of business. Claimant has been surviving with the help of friends and food stamps.

(10) Claimant currently lives with a friend, has a driver's license and drives to doctor visits once per month, does very little grocery shopping, minimal household chores, and no outside work.

(11) Claimant alleges as disabling impairments: neck and back pain, chronic pulmonary insufficiency, swelling in his legs and ankles, depression and anxiety.

### 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 (PRM).

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 (PRM).

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 MRI of claimant’s lumbar spine of September 10, 2008 showing a broad-based disc bulge with a large superimposed right foraminal disc protrusion at L5-S1 with significant bilateral foraminal stenosis at this level, and mild multilevel spondylosis in the remaining segments due to a combination of minimal disc bulge and moderate facet arthropathy.

Electromyography and nerve conduction velocity study of September 30, 2008 shows evidence for a mild acute L5 radiculopathy on the right.

Claimant was treated for an overdose of morphine in February, 2009, but denied that he was feeling suicidal and claimed he took double dose of medication accidentally.

December 18, 2008 MRI of claimant’s cervical spine due to neck and radicular arm pain indicated mild degenerative changes with spondylosis at multiple levels, moderate spinal canal stenosis at C3-C4, C4-C5 and C5-C6, and a small shallow herniation of the C6-C7 disc protruding posteriorly in the midline.

May, 2009 psychological exam quotes the claimant as alleging disability due to COPD and problems breathing. Claimant stated he quit smoking in November, 2008. Claimant also

stated he has several vertebrae in his neck which need to be fused because they cause pain in his neck and numbness in his hands. He also has several disks in his back that need to be fused and cause the back of his legs to ache and cause him significant pain. Claimant also stated he has trouble concentrating and about a year ago he started getting anxiety attacks for which he is taking medication. Claimant was not seeing anyone for counseling or therapy. Claimant reported being able to walk longer than stand, that he tries to walk every day about a mile to mile and a half before he gets too sore, and that his ankles will swell up on him. Claimant also stated that he cannot sit in front of a computer because it really bothers his neck.

Claimant arrived on time for his appointment and was driven by his girlfriend. Claimant stated he only sleeps 4 hours in a 24 hour period and worries about his finances. Claimant's medications do help quite a bit, and his panic attack medication works pretty good, but he was having a panic attack in the office. Claimant is in pain most of the time in his legs and into his lower back, and the pain increases as the day goes by. Claimant denied any hallucinations or delusions, he has never threatened or attempted suicide, and he has never had any type of a psychiatric admission. Claimant was able to remain seated throughout the hour long examination, was polite and cooperative, and did not appear to have any difficulty interacting with the examiner. Claimant was able to get in and out of his chair without apparent difficulty, he did tend to wring his hands together and be somewhat anxious, but was able to make and maintain eye contact. Claimant was oriented to person, place and time. Claimant's diagnoses are depressive disorder NOS, generalized anxiety disorder, physical complaints, and GAF of 53. Claimant's prognosis is guarded-poor, and the likelihood of him becoming gainfully employed at this point in time is likely poor.



Medical notes for a visit of May 19, 2009 state that the claimant is unfortunately still smoking and needs to stop in order to have surgery that might help him in respect to his neck and before his condition gets worse. Doctor would like to see the claimant back in two months or when he stops smoking.

December 8, 2009 medical assessment scheduled by the department states that the claimant has neck and lower back issues, right shoulder problems, leg swelling, COPD, and psychological problems. Claimant's most urgent issue at present is his neck, and he was scheduled for surgery but it was cancelled at the last minute. Claimant's neck hurts at the base and if he moves his head just right, for the rest of the day his hands and arms are numb, and he has even had episodes of generalized numbness from the neck down to the feet. Claimant is on diuretics for swelling of the legs that requires compression stockings. Claimant also takes morphine for pain, but no other analgesics, as previous use of nonsteroidal anti-inflammatory drugs led to acute renal failure which resolved without dialysis.

Physical examination showed that the claimant is 5'8" tall and weighed 152 pounds, with blood pressure of 98/62. Claimant's lungs were clear and the heart rhythm regular with no murmur or gallop. Claimant's hands appear somewhat stiff, grips slightly asymmetric at 45 pounds on the right side and 55 pounds on the dominant left side. Claimant has stiffness and pain in the deltoid area of the right shoulder suggesting subacromial impingement. Claimant exhibits a range of motion at 75% of normal in all neck quadrants, and is tender at the base of the neck. At the lower back he has no deformity of local tenderness, and sensory and motor is full in the lower extremities. Claimant has good strength walking on heels and toes and symmetric muscle mass, his reflexes are symmetric and his gait is normal. Claimant does not currently show any edema nor any stasis changes at the ankles. Impression was that of cervical

radiculopathy which by claimant's description appears to be rather severe, lumbar pain and potential radicular symptoms, peripheral edema by history, COPD, right shoulder impingement, and psychological issues for which he was receiving no psychological treatment. Doctor states that claimant's constellation of problems he describes appears to be genuine and at the present time he does not view him as employable in a manual labor setting.

December 4, 2009 psychological evaluation by a licensed psychologist scheduled by the department states that the claimant appeared to be honest and direct in his responses to the questions without evidence of malingering or exaggeration of pathology. Claimant described having pain in his neck, his lower back from a bulging disc, and his right shoulder, this pain is daily and rated #8 on a scale of 0 to 10 even with the use of medication. Claimant reported having problems with anxiety as of about a year ago, but this is now controlled with medication. Claimant also reported having problems with his memory and concentration, and complained of being depressed for the past one and a half years because he cannot work.

Claimant was in contact with reality, cooperative but rather subdued, and appeared to have problems with his memory. He was oriented, alert, and nonspontaneous, his speech was clear, coherent, and fluent, and his thought processes were relevant, logical, and connected, but he did appear to have some memory deficits. Claimant denied blackouts, delusions, persecutory ideations, or obsessions, and he did have thoughts of suicide in the past but not currently, with no intentions or plans. He denied any homicidal thoughts. Claimant is somewhat somatically preoccupied, and does describe a sleep and appetite disturbance.

Claimant's diagnoses is that of major depressive disorder-single episode, moderate, in partial remission, panic disorder in remission, history of alcohol abuse in remission (claimant stated he did abuse alcohol in the past but stopped two years ago), and GAF of 50 to 55.

Potential for gainful employment in a simple, unskilled work situation on a sustained and competitive basis is guarded pending medical resolution.

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 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. 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 must evaluate claimant's ability to perform past relevant work. Claimant's past relevant work was doing carpet cleaning, which would be a physically demanding job. Claimant has medical issues that would prevent him from performing this type of a job. 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] of [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, and that he is physically unable to perform even sedentary work if demanded of him. This finding is based on claimant's neck problems which are severe and cause him numbness in hands and daily considerable pain. Claimant was to have surgery on his neck, but this surgery was cancelled due to lack of funds and/or insurance to cover it. Without such surgery claimant's condition, which has lasted for about 2 years, will continue for 12 months or more. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does establish that claimant has no residual functional capacity to perform other work. Claimant is not disqualified from receiving disability at Step 5 based upon the fact that he has established by objective medical evidence that he cannot perform even sedentary work at this time. 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 does meet 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 does meet the disability criteria for State Disability Assistance benefits.

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 SDA application.

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

1. Process claimant's disputed March 2, 2009 MA and SDA application.
2. Grant the claimant any such benefits he is otherwise eligible for (i.e. meets financial and non-financial eligibility requirements).
3. Notify the claimant in writing of this determination.
4. Review claimant's ongoing MA and SDA eligibility in June, 2011, at which time updated medical records are to be obtained.

SO ORDERED.

/s/ \_\_\_\_\_  
Ivona Rairigh  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: June 7, 2010

Date Mailed: June 8, 2010

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

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

2010-98/IR

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