

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: 2010-16310
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 9, 2010
Genesee 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 March 9, 2010. Claimant personally appeared and testified.

ISSUE

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

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

(1) On October 6, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On November 24, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On November 25, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On December 21, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On February 1, 2010, the State Hearing Review Team (SHRT) again denied claimant's application stating that the medical evidence of record does not document a mental/physical impairment(s) that significantly limits the claimant's ability to perform basic work activities per 20 CFR 416.921(a). SDA was also denied due to lack of impairment severity.

(6) Claimant submitted additional medical information following the hearing that was forwarded to SHRT for review. On April 14, 2010 SHRT once again determined that the claimant was not disabled, citing the same reason as in their February 1, 2010 decision.

(7) Claimant is 52 year old man who is 5'10" tall and weighs 214 pounds after losing about 12 pounds due to medication he is taking. Claimant completed 12th grade and 1 year of college in sociology classes, and can read, write and do basic math.

(8) Claimant states that he last worked 3 years ago as a cook for about one year, job he was fired from due to calling in sick too much. Claimant was also a cook from 2002 to 2004, job he was also fired from, and has held temporary jobs in construction, cement and brick work. Claimant is a veteran having been in the military from 1976 to 1977.

(9) Claimant currently lives with girlfriends and friends, and has been supported by friends and relatives. Claimant has no driver's license and states it expired in 1984.

(10) Claimant alleges as disabling impairments back spasms and arthritis.

(11) Claimant has applied for Social Security disability and that decision was pending at the time of the hearing.

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 2007. 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 emergency room report of March 16, 2008 quoting the claimant as complaining of lower back pain and denying injury to his back. Claimant stated he is out of pain medication. Claimant did not show signs of distress. Claimant was given muscle relaxer and anti-inflammatory medication.

Medical Examination Report for an exam of October 19, 2009 indicates as claimant’s current diagnosis chronic back pain, mild both hip arthritis, and Vitamin D deficiency. Claimant was 5’11” tall and weighed 226 pounds, and his blood pressure was 150/90. Claimant was noted not to have any mental limitations and could meet his needs in the home.

Medical examination report performed for [REDACTED], [REDACTED] quotes as claimant’s stated disability lower back pain which he reported having for a couple of years. Past medical history indicates that the claimant has been in generally good health and had no chronic diseases. Claimant reported knowing how to drive, and that he is independent in feeding, bathing, and dressing himself. He estimates he can stand for 20 to 40 minutes before he gets pain in his lower back, but moving around or changing positions diminishes this pain. Claimant further stated that when he walks he gets numbness in the backs of his heels which may shoot up through his arm, and when he walks three to four blocks, he said he tires and sits down for a few minutes and is then able to continue or return.

On physical examination, claimant was found to be a well-developed and well-nourished man. Claimant walked and moved without apparent difficulty, and arrived early for his

appointment. Claimant was not using any handheld walking aids, and he did not limp. Provocative testing of full passive range of motion and internal and external rotation of both hips were of normal amount, but claimant reported some left-sided lower back pain resulting from internal rotation of the left lower extremity at the hip joint. Claimant could tandem heel and toe walk, squatting fully and arising under his own power, but again complained of left-sided lower back pain. He could get on and off the examining table and stated he can climb stairs also. Deep tendon reflexes were 2+ and equal at the knees and ankles. Only mild tightness of the hamstrings was noted in the testing. Palpation of claimant's back, both upper buttocks and both sciatic notches provoked no complaints of localized tenderness. Claimant had an active range of motion of the thoracic spine which was normal in flexion, extension, and left lateral flexion. With forward flexion, a very good curve was noted at the junction of the low back with the pelvis. However, the claimant climbed back up his lower extremities with his hands and complained of left-sided lower back pain. Claimant had strong and normal values in grip strength testing.

Veteran's Administration medical records show that claimant's drug screen showed positive for cocaine and marijuana on March 23, 2010. Claimant called for narcotic medications on March 29, 2010 and was told of the drug screen, and is aware that narcotics cannot be ordered with positive drug screen.

There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. The evidentiary record is insufficient to find claimant suffers a severely restrictive physical or mental impairment. For these reasons, this Administrative Law Judge finds that claimant has failed to meet his burden of proof at Step 2.

Claimant must be denied benefits at this step based upon his failure to meet the evidentiary burden.

If claimant had not been denied at Step 2, the analysis would proceed to Step 3 where 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, if claimant had not already been denied at Step 2, the Administrative Law Judge would have to deny him again based upon his ability to perform past relevant work. Claimant's past relevant work was a cook and working in restaurants since 1996 according to the work history report he completed for his Social Security disability application. Claimant complains of lower back pain but the medical information provided does not indicate that his physical condition is such that it would prevent him from light work he has performed in the past. Finding that the claimant is unable to perform work which he has engaged in in the past cannot therefore be reached and the claimant is 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]
[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 lacks the residual functional capacity to perform tasks from his prior employment, or that he is physically unable to do at least light 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 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 sedentary and light work at the very least. Under the Medical-Vocational guidelines, an individual closely approaching advanced age (claimant is age 52), with high school education or more (claimant has 1 year of college) and an unskilled or no work history who can perform even only light work is not considered disabled pursuant to Medical-Vocational Rule 202.13.

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 significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). Although the claimant has cited medical problems, the clinical documentation submitted by the claimant is not sufficient to establish a finding that the claimant is disabled. There is no objective medical evidence to substantiate the claimant's claim that the alleged impairment(s) are severe enough to reach the criteria and definition of disabled. The claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

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

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of sedentary and light work at least 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 23, 2010

Date Mailed: June 24, 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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