

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: 2010-1849
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 24, 2009
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 November 24, 2009. Claimant personally appeared and testified. Claimant's brother [REDACTED] and his fiancée [REDACTED] also appeared and testified on claimant's behalf.

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 November 18, 2008 claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On June 3, 2009, the Medical Review Team denied claimant's application stating that claimant was capable of past relevant work per 20 CFR 416.920(E).

(3) On August 14, 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 20, 2009, the State Hearing Review Team (SHRT) again denied claimant's application stating that he was capable of performing past work, that of a handy man.

(6) Claimant provided additional medical evidence following the hearing that was forwarded to SHRT for review. On January 4, 2010 SHRT once again determined that the claimant was not disabled, as he retains the capacity to perform past relevant work.

(7) Claimant is a 52 year old man whose birth date is June 30, 1958. Claimant is 5' 6" tall claiming he used to be 5'8" tall but is shorter due to back problems, and weighs 142 pounds. Claimant completed high school and can read, write and do basic math.

(8) Claimant states that he last worked in September, 2007 as a handy man, job he claims ended due to his health. Claimant has also worked as an assembly line worker for 4 months in 2002, as a carpet installer from 1999 to 2001, as a dry wall finisher from 1997 to 1999, and as a manager of a gas station from 1982 to 1997 when he was fired from this job.

(9) Claimant currently lives with a friend in a house and receives food stamps, has a driver's license and drives 2-3 times per week to the local store, microwaves simple meals, and goes grocery shopping by using a riding device to get around.

(10) Claimant alleges as disabling impairments back pain from an injury in August, 2008 when he was helping a friend work on a car, arthritis, stomach problems due to past

excessive drinking, hand problems due to broken wrist and fingers, depression, bipolar disorder and anxiety.

(11) Claimant has applied for Social Security disability and been denied.

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 1, 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 1, 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 3, 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 4 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 4 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 2007. 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 Medical Examination Report of December 1, 2008 by claimant's treating physician. The report indicates that the claimant's diagnosis is lumbar spondylosis. Claimant was in mild distress and had lumbar vertebral tenderness, but his other examination areas were normal. Claimant's condition was stable but he was limited to only lifting less than 10 lbs. frequently, standing and/or walking less than 2 hours in an 8-hour work day, and sitting less than 6 hours in an 8-hour work day. Claimant could use neither of his hands/arms for reaching and pushing/pulling due to low back pain and restricted

range of motion in his back. Claimant had no mental limitations and could meet his needs in the home without assistance.

Psychological testing report of April 30, 2009 describes the claimant with good hygiene and grooming, but carrying an ice pack pressed against his hip area due to recent hernia surgery. Claimant was perceptually oriented and presented his ideas in a logical and coherent fashion. Claimant's speech was readily understandable with no impediments. Claimant's demonstrated affect was depressed with reports of worsening depression over the past 2 years due to job loss and medical issues. Claimant denied any history of suicidal feelings, attempt, or psychiatric hospitalization. Claimant related that he is generally depressed and has chronic problems sleeping, and was taking Ambien for sleep. Claimant has been seen as a psychiatric outpatient at New Passages for the last 3 months with a diagnosis of bipolar disorder and current medications Valium and Lithium.

Claimant reported smoking a pack of cigarettes per day and being a daily drinker until he underwent residential substance abuse treatment 7 years ago. Claimant did state that he smokes marijuana on a monthly basis, but denied any use of other street drugs. Current diagnostic impression is that of bipolar disorder (by history) with reactive depression secondary to job loss and medical issues. It was recommended that the claimant continue to be involved in outpatient psychiatric treatment designed to reduce psychiatric symptoms, stabilize daily functioning, and address any ongoing substance abuse issues. Ongoing use of psychotropic medication will be an essential component of this treatment and necessary to any successful long-term attempt at vocational rehabilitation.

Claimant was seen for an internal medicine evaluation on April 29, 2009 with chief complaint being chronic back pain (degenerative disc disease). Claimant had an MRI which

shows L4-L5 central disc prolapse and L5-S1 disc degeneration with ureterolithiasis. Claimant reported his back pain is worse with long standing or sitting, and with heavy lifting. Physical examination revealed well-developed, well nourished, alert, oriented and cooperative gentleman. Claimant gets on and off the examining table without much difficulty, but ambulates with some stiffness. Claimant had normal peripheral pulses and no pitting edema. Cranial nerve 2-12 are grossly intact, there was no localized motor or sensory deficits, and deep tendon reflexes could be elicited. Clinical impression is that of chronic back pain (degenerative disc disease), degenerative joint disease, hypertension, bipolar effective disorder, and chronic obstructive pulmonary disease, moderate.

Orthopedic surgeon's exam of February 16, 2009 indicates claimant's complaints include disc in back, right hip, both knees, left hand, left foot/right leg, and degenerative joint disease. Claimant reported being able to drive, and that he is independent in feeding, bathing, and dressing himself. Claimant appeared to have a trace limp on the right side, but he was using no handheld walking aids. Claimant could do tandem heel and toe walking, get on and off the examining table, and squat fully and arise under his own power. His deep tendon reflexes were 2+ and equal at the knees and ankles. Nothing in claimant's examination supported the need for handheld walking aids, at this time. Claimant's range of motion of the hips was mostly within normal limits. Normal limits were apparent in abduction, adduction, internal and external rotation, and forward flexion of both hips, but all motions were said to be somewhat painful, more so with forward flexion of the right hip, and the complaint was of groin pain. Claimant seemed to have grossly normal hearing, vision, and phonation. He showed good facility with both hands, alternately picking up coins with one hand and then with the other. Claimant's

Jamar dynamometer grip strength was considered strong at 80 pounds per square inch in the dominant right hand and 85 pounds per square inch in the left.

Assessment from hospital therapy services from admission date of February 10, 2009 states that the claimant does present with symptoms correlating with the diagnosis of lumbar degenerative disk disease/lumbar radiculopathy. Claimant will require skilled physical therapy for problems of moderate pain, decreased spinal mobility and deficits in gross strength. Claimant was to be seen two times a week for relaxing and strengthening exercises as specified on the script dated February 3, 2009.

Physical therapy discharge evaluation of March 18, 2009 states that the claimant was seen in outpatient physical therapy for 12 visits with treatments consisting of moist heat, stretching and strengthening exercise with a home programs instruct. Claimant reported still having pain in the lower back, and that it feels like someone has driven a nail right down the spine. Claimant also reported he still has to use a cart or sit in the Amigo when grocery shopping, and that he tried to work on his van but he suffered greatly from it with increased pain and discomfort. Claimant stated he washed dishes last night standing at the sink for 15 minutes, had increased pain in the lower back afterwards, and woke up stiff and sore in the lower back.

After examining claimant's lumbar flexion, extension, side bending measurements, and hamstring flexibility, the conclusion was that he does have improved strength in the lower extremity musculature by one half grade which will improve his prolonged standing and ambulation tolerance to be at least 250 feet consecutively without increased lower extremity symptoms. Claimant did have increased lower extremity discomfort after ambulating for the first 100 feet but he was able to ambulate 300 feet consecutively within the department on this date. Claimant's decrease in spinal mobility could be contributed from his attempt to work on his van

in a bent over position this past weekend. Claimant could benefit from continuing with his stretching and strengthening exercises on a home program. No further physical therapy visits are planned after this date.

On August 26, 2009 claimant was given a prescription for a back brace for support.

October 21, 2009 ultrasound of claimant's right testicle shows no blood flow, and finding is consistent with atrophic testicle without blood supply.

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. These impairment(s) have lasted 12 months or more. Analysis therefore 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 would have a difficult time performing his past relevant work. Claimant's past relevant work was doing all types of handy man work, profession that would require extensive physical movements, lifting, bending, etc. Claimant was also engaged in other type of labor work such as carpet installer, assembly line worker and gas station manager, all of which would require extensive physical movements. 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 *Dictionary of Occupational Titles*, published by the Department of Labor... 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, or that he is physically able to do more than sedentary work if demanded of him. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does establish that claimant has residual functional capacity to perform other work. However, claimant is not disqualified from receiving disability at Step 5. Under the Medical-Vocational guidelines, an individual closely approaching advanced age (claimant is 52 years of age), with high school education and an unskilled work history who can perform only sedentary work is considered disabled pursuant to Medical-Vocational Rule 201.12.

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, department's decision is REVERSED. Department shall:

1. Process claimant's disputed November 18, 2008 MA and SDA application and grant him any such benefits he is otherwise eligible for (i.e. meets financial and non-financial eligibility criteria).
2. Notify the claimant in writing of this determination.
3. Review claimant's ongoing MA and SDA eligibility in September, 2011, at which time updated medical information is to be obtained. Claimant is advised that his failure to follow any recommended medical treatment may result in future denial of his MA and SDA benefits.

SO ORDERED.

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

Date Signed: August 17, 2010

Date Mailed: August 17, 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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