

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No: 2010-32584
Issue No: 2009
Case No: ██████████
Load No: ██████████
Hearing Date:
July 13, 2010
Kalamazoo County DHS

ADMINISTRATIVE LAW JUDGE: Ivona Rairigh

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, an in-person hearing was held on July 13, 2010. Claimant personally appeared and testified along with his wife ██████████. Claimant was represented by ██████████, ██████████.

ISSUE

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

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 December 4, 2009, claimant filed an application for Medical Assistance and retro MA benefits alleging disability.
- (2) On March 17, 2010, the Medical Review Team denied claimant's application stating that his impairment lacks duration of 12 months per 20 CFR 416.909.
- (3) On March 18, 2010, the department caseworker sent claimant notice that his application was denied.

- (4) On April 5, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (5) On May 4, 2010, the State Hearing Review Team (SHRT) also denied claimant's application stating that according to April 20, 2010 Social Security Administration (SSA) denial of the claimant to other work he retains the ability to perform light exertional work and there are no psychiatric limitations. SHRT adopted this SSA determination.
- (6) Claimant presented additional medical evidence following the hearing which was forwarded to SHRT for review. On July 16, 2010 SHRT again determined that the claimant was not disabled as he retains the capacity to perform sedentary work per 20 CFR 416.967(a) and Vocational Rule 201.13. SHRT also noted that the newly submitted evidence does not significantly or materially alter the previous recommended decision.
- (7) Claimant is a 53 year old man whose birthday is [REDACTED]. Claimant is 5'8" tall and weighs 170 pounds. Claimant completed high school and can read, write and do basic math.
- (8) Claimant states that he last worked on [REDACTED] as a maintenance person at [REDACTED] for 5 weeks, until he had a stroke. Claimant has also worked in factory line work from 2005 to 2008, job he quit for a higher paying job in another factory, and was a factory worker in a paper mill from 1975 to 2004.
- (9) Claimant currently lives in a rented house with his wife and adult son and receives food stamps. Claimant has a driver's license but seldom drives, cooks simple meals and watches TV to pas the time.
- (10) Claimant alleges as disabling impairments stroke, back surgery, left hand nerve damage, degenerative disc disease, depression and cognitive difficulties due to stroke.
- (11) Claimant has applied for Social Security disability and been denied, and is appealing this denial.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (RFT).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905

A set order is used to determine disability, that being a five-step sequential evaluation process for determining whether an individual is disabled (20 CFR 404.1520(a) and 416.920(a)). The steps are followed in order. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If it is determined that the claimant is or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.

At Step 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 2, 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.

resulting from a vehicle accident in 2001 for which he has had couple of surgeries on his back and neck.

Claimant's blood pressure was 190/100 with pulse 84 and regular. His speech was clear. Gait was normal and no assistive devices were used for ambulation. Peripheral pulses were easily palpable and symmetrical and there was no edema or evidence of varicose veins. Claimant did have some tenderness of his left shoulder on deep palpation. Range of motion of all joints inspected is full. The right hand has full grip and digital dexterity. The left hand has decreased grip strength of 60% in comparison to the right hand. Claimant did have some mild digital dexterity loss, but was able to pick up coin, button shirt, and open door. He did not exhibit any difficulty getting on and off the table. Heel and toe walking were normal though he did have some difficulty with it. Manual muscle testing of the extremities reveals that the right upper and right lower extremities are at full 5/5. However, the left upper extremity is globally 4+/5 and so is the left lower extremity. There is some atrophy noted in the bicipital and triceps muscles of the left upper extremity.

Conclusion is that claimant's diabetes is not well controlled, as it is quite elevated with ranges anywhere from the high 170s to 250s, and he was strongly urged to continue management of this blood sugar and follow up with his primary care physician. Claimant was also strongly urged to go to the emergency department after this appointment or at the very least go see his primary care physician due to his blood pressure being 190/100. Claimant is at high risk for another stroke at this time given his history of hypertension, being male, and having elevated blood sugars and his diabetes mellitus.

Psychological evaluation of March 4, 2010 completed for SSA quotes the claimant as saying he had tried to go back to work at [REDACTED] in maintenance in [REDACTED], [REDACTED] and found he had lost stamina and had cognitive issues that stood in the way of his work. Claimant noted issues with depression since his stroke. Claimant was driven to the appointment by his wife and walked with a slight limp to his left side.

Claimant answered many questions in a fairly straight forward manner and presented in a coherent manner with no derailment in his thought process. He seemed well organized in his presentation and his answers seemed logical and to the point. Claimant admitted to issues with short term memory since the CVA. His long term memory seemed appropriate. He denied hallucinations or delusions, suicidal ideation or past attempts. Claimant appeared moderately depressed and quite frustrated with leading a sedentary lifestyle.

Diagnoses were that of mood disorder due to CVA and a GAF of 54. Prognosis was fair as the claimant would probably have trouble working at the present time. Claimant would probably benefit from continued occupational and physical therapy to assist him in gaining more strength, and from supportive counseling.

It is noted that the claimant smokes one pack of cigarettes per day, something he continued to do at the time of the hearing, and most likely not a desirable activity with his medical issues.

Medical evidence has clearly established that claimant has an impairment (or combination of impairments) that has more than a minimal effect on claimant's work activities. See Social Security Rulings 85-28, 88-13, and 82-63. This impairment is from a stroke in October, 2009 causing weakness in his left arm and leg as of the date of last medical exam, January, 2010. Claimant has had diabetes and high blood pressure for years, and also had surgeries on his neck several years ago, and has been gainfully employed with these conditions up to the time he had the stroke. Psychological report does not indicate that claimant's cognitive impairments are of a severe nature, as the only issue cited appears to be some problems with short term memory as related by the claimant. While the stroke certainly caused the claimant to be unable to perform any work for a period of months, he reported doing some physical therapy exercises at home and regaining his strength on the left side as of January, 2010 medical examination. Claimant has therefore not shown that his impairments caused by the stroke have lasted 12 months. He therefore fails his burden of proof at Step 2 and can be denied at this step.

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. 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 doing maintenance and in factory work. Finding that the claimant is unable to perform work which he has engaged 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], published by the [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 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. Under the Medical-Vocational guidelines, an individual closely approaching advanced age (claimant is age 53), with high school education and an unskilled work history who can perform 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 for a period of 12 months. 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.

It is noted that the hearing testimony of the claimant and his wife as to his cognitive impairments which they describe as severe is not disregarded by this Administrative Law Judge. The reason why such alleged impairments cannot be considered disabling is that the psychological evaluations do not support the extent of described severity of these impairments.

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 and retroactive Medical Assistance. The claimant should be able to perform a wide range of sedentary and light 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: December 22, 2010

Date Mailed: December 22, 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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