

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 2010-49181
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 22, 2010
Oceana 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 September 22, 2010. Claimant personally appeared and testified along with his aunt [REDACTED].

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P), retro MA 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 23, 2010, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On July 27, 2010, the Medical Review Team denied claimant's application stating that claimant could perform other work per Medical/Vocational Grid Rule 202.17.
- (3) On August 2, 2010, the department caseworker sent claimant notice that his application was denied.

- (4) On August 16, 2010 claimant filed a request for a hearing to contest the department's negative action.
- (5) On August 24, 2010, the State Hearing Review Team again denied claimant's application stating that he is capable of performing light work per 20 CFR 416.967(b) and Vocational Rule 202.17.
- (6) Claimant is a 32 year old man whose birthday is [REDACTED]. Claimant is 5'6" tall and weighs 150-160 lbs, after gaining what he states is 30 lbs. in the last 6 months due to difficulty moving around. Claimant completed 9th or 10th grade (not sure which) and has no GED, and claims he reads on 2nd or 3rd grade level, can only print his name, and can do very little basic math.
- (7) Claimant states that he last worked 6-7 years ago in a junk yard running a smasher. Claimant also worked on a farm, as a mechanic for 4 years on and off, and for a rodeo. Claimant has been supported by his family and currently lives with his aunt and grandmother in a house. Claimant also receives food stamps.
- (8) Claimant states he has never had a driver's license, that he has neuropathy in his hands so it is hard for him to fix food, that he walks sideways with legs spread to keep his balance and does not go grocery shopping, cleans house, and finds outside work difficult.
- (9) Claimant alleges as disabling impairments neuropathy, severe back pain, lower extremity pain with weakness, head injury with 2 bullets in his head, trouble seeing, and depression.
- (10) 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).

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 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.

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 in 6-7 years. 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 an August 11, 2009 CT of claimant's abdomen due to complaint of abdominal pain for one week. Impression is essentially unremarkable CT of the abdomen.

Medical exam report of October 8, 2009 quotes the claimant's aunt saying that the claimant was struck by shotgun pellets in the scalp and right arm at the age of 13, and by the age of 25 it was clear that there were some generalized problems including tingling, headaches, reduced vision, and slurred speech. Claimant reported drinking excessively in the past but that he has very little alcohol now. Claimant denied working since year 2000, but could not explain calluses on his hands since he is not doing anything physical and watches a lot of TV.

Physical examination indicates that the claimant's vision is somewhat impaired (20/60 OD, 20/50 OS, and 20/40 OU). He has a tiny mass on the left crown consistent with a gunshot bee bee but no other findings. Claimant's hands are callused and slightly soiled without any atrophy, swelling, or deformity. Sensory is full. Claimant's statements as far as tingling of his fingers after completing testing including grip testing were inconsistent. The grips were very good. Sensory was full in the lower extremities and strength intact. He had no findings about the ankles although both have been

symptomatic. The sensory, color, temperature, moisture and DP pulses were full at the feet. Claimant's gait was bizarre, it was halting and flat footed, and he did appear unsteady on tandem gait. Impressions were that of gunshot wound injuries and other health issues as described. Examiner states he is challenged to pull this altogether into a single recognized diagnosis, but is inclined to believe that the claimant has a gait problem and that the cane may be necessary.

Claimant was in the emergency room on March 18, 2010 with complaints of low back and lower leg pain for 8 to 9 years. Claimant was a heavy drinker until 8 or 9 months ago when he stopped drinking completely, but while he thought the back and leg pain was due to alcohol, it has not improved. Physical exam states that the claimant was tender in the lumbar region, lateral calf muscles, and that his feet were "sore". Neurologic exam was normal. MRI of claimant's lumbar spine revealed no fracture dislocation, or subluxation. There were mild degenerative changes. Claimant was released to home.

Medical Examination Report of April 9, 2010 from a doctor that was seeing the claimant for the first time on this date indicates that he reported 2 year history of increasing back pain, and that this pain is severe if he attempts to untie shoes. It is indicated that the claimant needs an MRI of thoracic and lumbar spine. Claimant is limited to lifting up to 10 lbs. occasionally.

Psychological Evaluation Report completed for the department on July 7, 2010 quotes the claimant as complaining of back pain, and that he has been taking Norco for the pain for at least 2 months. Claimant stated he likes to play Nintendo, watch television and play cards with his sister and brother, but then also stated he has problems with his hands and can't hold things because he shakes really bad. Claimant also stated that he helps out his brother work on boats and cars and gets 5 or 10 dollars for doing this.

Examiner administered psychological testing and believes that the I.Q. scores obtained can not be accepted at face value or considered to be valid estimates of claimant's ability or potential. Claimant was not felt to be trying very hard to complete the test items. The results were not felt to be influenced by visual factors. His I.Q. score of 22 on the Leiter suggests that he was attempting to exaggerate his symptoms. That being said, the examiner has reason to believe that claimant's actual I.Q. abilities likely fall at the lower end of Borderline, and that he has learning disabilities in Mathematics and Written Expression. He does appear to have physical problems, and a very unusual gait. Claimant would not meet diagnostic criteria for Mild Mental Retardation, but the combination of his lower (borderline) I.Q. and problems with writing and math coupled with his physical conditions would likely give him significant impairments if trying to function in even the most basic job situations.

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 impairments have lasted 12 months. Claimant therefore meets his burden of proof at Step 2 and analysis continues.

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 is inclined to conclude that the claimant can do his past relevant work in a junk yard, farm work, and as a mechanic performing simple tasks. All of these jobs are of a simple nature and claimant should be able to perform them despite his mental limitations. Claimant does report severe physical pain and has a "bizarre" gait, but an MRI of his lumbar spine shows no serious issues, and there is no objective medical evidence to show he would be prevented from performing past work. In addition, medical and psychological reports state that the claimant's hands are callous and dirty which puts in question his claim that he does not do any physical labor and only plays ██████████, watches TV and plays cards. Claimant stated that he cannot use his hands to hold things as they shake a lot, however ██████████ and cards are both activities that require holding things for extended periods of time. Psychological testing indicated that the claimant exaggerates his symptoms. His unusual gait cannot be explained by any medical evidence, and one may wonder if the claimant is also exaggerating his stated inability to walk normally. Claimant could therefore be denied 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 ██████████, published by the ██████████... 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 light work. Under the Medical-Vocational guidelines, a younger individual (claimant is 32 years old) who is illiterate and has only unskilled or no work history who can perform light work is not considered disabled pursuant to Medical-Vocational Rule 202.16.

In conclusion, 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 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 1, 2010

Date Mailed: December 1, 2010

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

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

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