

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: 2010-9152
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 9, 2010
Berrien 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 February 9, 2010. Claimant personally appeared and testified. Also appearing and testifying on claimant's behalf was his wife [REDACTED]

ISSUE

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

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 June 23, 2009, claimant filed an application for Medical Assistance benefits alleging disability.

(2) On September 24, 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 October 1, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On October 14, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On December 9, 2009, the State Hearing Review Team (SHRT) again denied claimant's application stating he was capable of performing past work as a [REDACTED].

(6) Claimant submitted additional medical information following the hearing that was forwarded to SHRT for review. On February 12, 2010 SHRT once again determined that the claimant was capable of performing past work as a [REDACTED].

(7) Claimant is a 56 year old man whose birth date is [REDACTED]. Claimant is 6'2" tall and weighs 315 pounds, weight which is steady for him. Claimant completed high school and 2 years of electronic technical school, and can read, write and do basic math.

(8) Claimant states that he last worked in August, 2008 driving a truck, job that lasted him 3 years and from which he was fired when he exhausted his FMLA due to a medical condition that prevented him from returning to work. Claimant also worked as a truck driver from 2003 to 2005, and as a [REDACTED] from [REDACTED] until he was fired for poor attendance.

(9) Claimant lives with his wife and two adult children in a house he owns, and survives on a home equity loan and some money contributed by his children, in addition to receiving food stamps. Claimant has a driver's license and drives short distances as he is on

medications, does very little housework and outside work, and plays the guitar, watches TV, and does crossword puzzles as a hobby.

(10) Claimant alleges as disabling impairments: fibromyalgia, hypertension, heart condition, stomach polyps, and depression.

(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 one, 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 two, 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 three, 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 four 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 four 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 2008. 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 cardiac catheterization report of January 2, 2009. Claimant was seen by a cardiologist on January 13, 2009 for a follow-up post cardiac catheterization. Impression was that of nonobstructive coronary artery disease, intermittent chest pain, and hypertension. Claimant was advised to follow low-fat, low carbohydrate diet.

Medical Examination Report of July 27, 2009 completed by the claimant's family physician states as his current diagnoses hypertension, hyperlipidemia, fibromyalgia, sleep apnea and depression. Claimant weighed 305 lbs. and was 73 inches tall, with blood pressure of 122/74. Claimant reported fatigue and pain. All of claimant's other examination areas were normal except for having pain trigger points and being situationally depressed. Claimant's

condition was stable, he could lift/carry up to 10 lbs. occasionally, stand/walk and sit less than 2 hours in an 8-hour workday, and sit less than 6 hours in an 8-hour workday. Claimant had no limitations in using his hands, arms, feet or legs. Claimant was mentally limited in sustained concentration and social interaction due to his depression. Medical Needs form completed by the same doctor states that the claimant can work at his usual occupation.

Vocational evaluation of the claimant done for Social Security Administration on September 8, 2009 stating that the majority of claimant's past work as a tool programmer was sedentary and claimant can continue to do such work, as he is able to perform functions of light work.

Doctor follow-up visit of January 25, 2010 indicates as claimant's current medical problems hypertension and fibromyalgia. Claimant would like a letter discussing worsening fibromyalgia for disability and cholesterol testing. Claimant stated he is in constant pain all over his body. Physical exam shows claimant as well developed, well nourished, well groomed, and appearing minimally ill but tired. Claimant's lungs were clear to auscultation and percussion, and his heart had regular rate and rhythm and no murmur, rub, or gallop. Claimant had pain in most fibromyalgia areas with the usual tender areas, and also reported sharp electric shocks which go up into calves and forearms. Claimant was depressed but non-suicidal. Claimant weighed 312 lbs. and his blood pressure was 126/84. Claimant was diagnosed with hypertension, fibromyalgia, autonomic neuropathy, malaise and fatigue. Recommendations included routine monitoring of blood pressure with home blood pressure cuff, reduction of dietary salt intake, taking medications as prescribed and not to miss doses, and weight loss. It was noted that malaise and fatigue are totally disabling in large part due to combination of depression and fibromyalgia.

Medical evidence has clearly established that claimant has an impairment (or combination of impairments) that has more than a minimal effect on claimant's work activities. See Social Security Rulings 85-28, 88-13, and 82-63. Claimant's impairments have lasted 12 months, and he has therefore met the evidentiary burden at Step 3.

The analysis proceeds 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, the Administrative Law Judge must determine if the claimant is capable of past relevant work. Claimant had been driving a truck from 2003 to 2008, went on medical leave in November, 2008 because he could not perform the job, and then lost this job as he exhausted his FMLA. Claimant testified that he had filed for UCB but was denied due to his inability to work. Claimant was also a [REDACTED] programming and operating machines from 1993 to 2003, when he was fired due to poor attendance. Vocational evaluation done for Social Security Administration in September, 2009 describes [REDACTED] duties as being mostly sedentary and concludes that the claimant can perform such duties again. Claimant's main impairment according to his medical records and his hearing testimony is fibromyalgia pain that cannot be measured objectively, as the pain location and intensity is based only on subjective description of the person allegedly suffering from it. Claimant's medical record does not show that he is impaired to the point that he cannot perform sedentary duties of [REDACTED] job. Claimant also related that he suffers from depression, but he has never had any type of mental health

treatment and is not seeing a mental health professional. It is the conclusion of this

Administrative Law Judge that the claimant can perform his past relevant work as a [REDACTED]

[REDACTED].

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] [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 sedentary 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 work. Under the Medical-Vocational guidelines, an individual of advanced age (claimant is age 56), with more than high school education (claimant has 2 years of electronic school) and a skilled work history who can perform sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.08.

In conclusion, although the claimant has 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.

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. The claimant should be able to perform a wide range of sedentary 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: October 5, 2010

Date Mailed: October 6, 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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