

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: 2007-11101

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

July 18, 2007

Kalamazoo County DHS

ADMINISTRATIVE LAW JUDGE: Jana A. Bachman

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 July 18, 2007.

ISSUE

Whether the Department of Human Services properly determined that claimant has not established disability for purposes of Medical Assistance and State Disability Assistance.

FINDINGS OF FACT

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

(1) January 4, 2007, claimant applied for MA and SDA. He submitted medical records for department consideration.

(2) February 21, 2007, the Medical Review Team denied claimant's application.

Department Exhibit A.

(3) March 5, 2007, the department sent claimant written notice that the application was denied. Department Exhibit C.

(4) March 20, 2007, the department received claimant's timely request for hearing.

(5) June 21, 2007, the State Hearing Review Team (SHRT) denied claimant's application. Department Exhibit B.

(6) July 18, 2007, the telephone hearing was held. After the closing of the record, the Administrative Law Judge determined that the record was insufficient to make a determination. July 25, 2007 an Interim Order was issued for claimant to obtain additional medical evidence. Additional medical evidence was not received and the record closed.

(7) Claimant asserts disability based on impairments caused by numbness in his arms and legs, twitching, and difficulty hearing conversation.

(8) Claimant testified at hearing. Claimant is 37 years old, 5'11" tall, and weighs 190 pounds. He completed the tenth grade and is able to read, write, and perform basic math. His driver's license is expired. He cares for his needs at home.

(9) Claimant's past relevant employment has been in carpentry and factory work.

(10) June 23, 2005, claimant was examined by a neurologist. A letter was prepared to narrate the neurologist's findings. Letter indicates, in pertinent part, that patient is well-nourished, well-developed, healthy appearing male who is in no acute distress. Mental state clear and patient is fully oriented to self, current place, and date. Speech is clear. There are no language abnormalities as assessed by asking patient to follow commands, name objects, and repeat phrases. Gait and station are somewhat slow and cautious. Claimant is able to rise up on

his toes and also on heels with minimal difficulty. Examination of Romberg was negative. Claimant was able to stand and walk in a tandem manner without difficulty. Cranial nerves appear within normal limits. Patient demonstrates strength to be full in all four extremities with normal muscular tone and normal muscle bulk. There were no involuntary movements. Range of motion in head and neck is full. There was a reduction in temperature sens, quite dramatically in the distal upper and lower extremities. The sensation to temperature sens was preserved in the face. Vibration sens was diminished in both hands and in the feet. The perception of vibration sens was increased. On assessing coordination, there was no ataxia or dysmetria when doing finger to nose testing or heel to shin testing in the bilateral upper and lower extremities respectively. Muscle stretch reflexes were hypo reflexive in the upper extremities which doctor would grade as 1+ at each wrist, 1+ at each bicep, and 1+ at each tricep. In the lower extremities, reflexes were better preserved easily being 2+ and possibly even 3+ at each knee and ankle. Plantar stimulation was equivocal bilaterally. MRI imaging of the brain which was done May 26, 2005 revealed a normal study. Doctor indicates diagnostic considerations as follows: paraneoplastic involvement secondary to an occult neoplasm; Sjogren's syndrome; vitamin B6 toxicity; or idiopathic. (Department Exhibit A, pgs 28-31). August 1, 2005, claimant was again examined by the neurologist. Claimant reported continuing numbness in his upper and lower extremities and also described having some sort of twitching movements. Physical exam revealed a steady gait without ataxia; intact cranial nerve exam; full motor strength in all four extremities; and no ataxia of the upper extremities when doing finger to nose testing. Muscle stretch reflexes remain approximately 1+ in the upper extremities and 2+ in the lower extremities at each knee and each ankle. Doctor indicates that he did not observe any twitching movements. EMG was conducted that did not provide any clues into a type of diagnosis that would contribute

to claimant's symptoms. Doctor recommended continued medical testing. Department Exhibit A, pgs 32-33. October 18, 2005, claimant was again examined by a neurologist. Claimant continued to complain of numbness and twitching. Doctor did not observe twitching on examination of patient. Doctor observed steady gait without ataxia; full extra ocular eye movements; and no facial weakness or weakness in any extremities. Department Exhibit A, pg 34.

(11) August 21, 2005, claimant underwent an MRI of the cervical spine that revealed a normal cervical spine. Department Exhibit A, pg 43. October 21, 2005, claimant underwent an MRI of the thoracic spine that revealed thoracic degenerative disc disease and normal thoracic spinal cord. Department Exhibit A, pg 44. July 28, 2005, claimant underwent electromyography of the right median nerve, right ulnar nerve, right perinal nerve, right sural nerve, needle examination, right upper extremity, and needle examination, right lower extremity that revealed normal needle examination and nerve conduction studies.

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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

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

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

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

If an individual fails to cooperate by appearing for a physical or mental examination by a certain date without good cause, there will not be a finding of disability. 20 CFR 416.994(b)(4)(ii).

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When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant is not engaged in substantial gainful activity and so is not disqualified from receiving disability at Step 1.

At Step 2, the objective medical evidence of record indicates that claimant has some reduced sensation in his extremities. Although claimant complains of extreme loss of sensation and twitching, multiple examinations and numerous objective medical tests fail to reveal objective medical evidence of said conditions. Finding of Fact #10-11.

At Step 2, the objective medical evidence of record is not sufficient to establish that claimant has severe impairments that have lasted or are expected to last 12 months or more and

prevent employment at any job for 12 months or more. Therefore, claimant is disqualified from receiving disability at Step 2.

At Step 3, claimant's impairments do not rise to the level necessary to be specifically disabling by law.

At Step 4, claimant's past relevant employment has been in factory work and construction work. The objective medical evidence of record does not reveal any severe limitation of impairment. See discussion at Step 2 above. Finding of Fact #9-11.

At Step 5, the objective medical evidence of record reveals claimant has slightly reduced sensation in his extremities. See discussion at Step 2 above. Finding of Fact #10-11.

The objective medical evidence of record is sufficient to establish claimant is capable of performing a wide range of work activities. Accordingly, claimant is not disabled and therefore is disqualified at Step 5.

Claimant does not meet the federal statutory requirements to qualify for disability. Therefore, claimant does not qualify for Medical Assistance based on disability and the department properly denied claimant's application.

It should be noted that at hearing, it was stated that claimant was receiving Medical Assistance. No objective medical evidence was supplied to the hearing record to corroborate the statement that claimant was approved for disability. Accordingly, the Administrative Law Judge is unable to give the statement any legal weight. However, if claimant has subsequently been approved by the department for Medical Assistance and/or approved for disability by the Social Security Administration, those decisions would supersede this Administrative Law Judge's decision that claimant is not disabled.

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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

Sec. 604 (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

- (a) Recipient of Supplemental Security Income, Social Security or Medical Assistance due to disability or 65 years of age or older.
- (b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.
- (c) A resident of an adult foster care facility, a home for the aged, a county infirmary, or a substance abuse treatment center.
- (d) A person receiving 30-day post-residential substance abuse treatment.
- (e) A person diagnosed as having Acquired Immunodeficiency syndrome (AIDs).
- (f) A person receiving special education services through the local intermediate school district.
- (g) A caretaker of a disabled person as defined in subdivision (a), (b), (e), or (f) above.

- (2) Applicants for and recipients of the State Disability Assistance program shall be considered needy if they:
 - (a) Meet the same asset test as is applied to applicants for the Family Independence Program.
 - (b) Have a monthly budgetable income that is less than the payment standard.
- (3) Except for a person described in subsection (1)(c) or (d), a person is not disabled for purposes of this section if his or her drug addiction or alcoholism is a contributing factor material to the determination of disability. 'Material to the determination of disability' means that, if the person stopped using drugs or alcohol, his or her remaining physical or mental limitations would not be disabling. If his or her remaining physical or mental limitations would be disabling, then the drug addiction or alcoholism is not material to the determination of disability and the person may receive State Disability Assistance. Such a person must actively participate in a substance abuse treatment program, and the assistance must be paid to a third party or through vendor payments. For purposes of this section, substance abuse treatment includes receipt of inpatient or outpatient services or participation in Alcoholics Anonymous or a similar program. 1995 PA 156, Sec. 605.
- (4) A refugee or asylee who loses his or her eligibility for the federal Supplemental Security Income program by virtue of exceeding the maximum time limit for eligibility as delineated in Section 402 of Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 U.S.C. 1612, and who otherwise meets the eligibility criteria under this section shall be eligible to receive benefits under the State Disability Assistance program.

After careful examination of the record and for reasons discussed at Steps 2-5, above, the Administrative Law Judge decides that claimant does not have severe impairments that prevent work for 90 days or more. Therefore, claimant does not qualify for SDA based on disability and the department properly denied his application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant has not established disability for Medical Assistance and State Disability Assistance.

Accordingly, the department's action is **HEREBY UPHELD**.

/s/

Jana A. Bachman
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: March 26, 2009

Date Mailed March 31, 2009

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 receipt 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.

JAB/db

cc:

