

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: 2007-26111

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

January 8, 2008

Oceana County DHS

ADMINISTRATIVE LAW JUDGE: Janice G. Spodarek

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 conference hearing was held on January 8, 2008.

ISSUE

Did the Department of Human Services (DHS) properly deny claimant's Medical Assistance (MA-P) and State Disability Assistance (SDA) application?

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 7/10/07, claimant applied for MA-P and SDA with the Michigan DHS.
- (2) Claimant did not apply for retro MA.
- (3) On 8/7/07, the MRT denied.
- (4) On 8/9/07, the DHS issued notice.

(5) On 8/21/07, claimant filed a hearing request.

(6) Claimant testified under oath that he has had two adverse SSA decisions.

Claimant further testified that he is alleging the same impairments. Claimant does not have enough work credits for RSDI.

(7) On 12/3/07, the State Hearings Review Team (SHRT) denied claimant.

(8) As of the date of application, claimant was a 47-year-old male standing 5' 9" tall and weighing 170 pounds. Claimant has a high school education.

(9) Claimant testified that he smokes approximately 1 ½ pack of cigarettes per day. Claimant has a nicotine addiction.

(10) Claimant testified that he does not have an alcohol/drug abuse problem or history.

(11) Claimant has a driver's license and can drive a motor vehicle.

(12) Claimant is not currently working. Claimant indicates his last work was in January 2007, when he was laid off. Claimant's work history is farm work and general labor jobs. Claimant's work history is not fully developed in the medical file; based on not having enough work credits for RSDI, claimant's work history is very limited despite his age of 47 years.

(13) Claimant alleges disability on the basis of epilepsy, a chronic L1 compression fracture with kyphosis, and mild L3 compression fracture of uncertain chronicity.

(14) The SHRT findings and conclusions of its decision are adopted and incorporated by reference to the following extent:

... 7/13/07 reports diagnosis of epilepsy three years previously. Took medications for approximately 2 years but stopped. Reported he had two seizures in the past few days. On 7/8/07, stated he had a grand mal seizure and hurt his back and went to the ER. Reported that he was back on his seizure meds and has not had seizure activity since. However, reports back really hurts since the seizure.

On 7/20/07 seizures were stable and denied any recurrent seizures. Back pain improved.

Analysis... claimant has history of seizures which are controlled on medication. However, he had stopped taking his meds and had a seizure 7/07. Also admitted to drinking alcohol in 7/07. Expected that his seizures will be controlled with prescribed treatment and if abstains from alcohol. He did hurt his back during his seizure but there was no evidence of any significant neurological abnormalities. Had a normal gait. Noted to have chronic compression fracture of the lumbar spine and osteoarthritis of the cervical spine which would limit him to light work. Denied per Medical Vocational Grid 202.20 as a guide.

(15) Claimant stipulated at the administrative hearing that hearing that he had no evidence that he could not work.

(16) Claimant argued at the administrative hearing that he needs Medicaid to help him afford medication.

#### 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).

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).

Michigan administers the federal MA program. In assessing eligibility, Michigan defers to the federal guidelines.

Prior to any substantive review, jurisdiction is paramount. Applicable to the case herein, policy states:

**Final SSI Disability Determination**

SSA's determination that disability or blindness does **not** exist for SSI purposes is **final** for MA if:

- . The determination was made after 1/1/90, **and**
- . No further appeals may be made at SSA, **or**
- . The client failed to file an appeal at any step within SSA's 60-day limit, **and**
- . The client is **not** claiming:
  - .. A totally different disabling condition than the condition SSA based its determination on, **or**
  - .. An additional impairment(s) or change or deterioration in his condition that SSA has **not** made a determination on.

Eligibility for MA based on disability or blindness does **not** exist once SSA's determination is **final**. PEM, Item 260, pp. 2-3.

Applicable federal regulations are found at 42 CFR Part 435. These regulations provide: "An SSA disability determination is binding on a department until the determination is changed by the SSA." 42 CFR 435.541(a)(2)(b)(i). These regulations further provide: "If the SSA determination is changed, the new determination is also binding on the department." 42 CFR 435.541(a)(2)(b)(ii).

In this case, there is apparently no relative dispute to the facts. Claimant has had two adverse SSA determinations. Claimant alleged the same impairments. Under the above-cited federal law and state policy, there is no jurisdiction by this Administrative Law Judge to proceed with a substantive review.

It is noted that should claimant receive a favorable decision in the future, that new decision would be binding on the state department.

In the alternative, should the sequential analysis be applied, the federal guidelines as provided below would be applied.

Statutory authority for the SDA program states in part:

- (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.

These federal guidelines state in part:

"Disability" is:

...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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...If you have an impairment(s) which meets the duration requirement and is listed in Appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering your age, education, and work experience. 20 CFR 416.920(d).

...If we cannot make a decision on your current work activities or medical facts alone and you have a severe impairment, we will then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can still do this kind of work, we will find that you are not disabled. 20 CFR 416.920(e).

If you cannot do any work you have done in the past because you have a severe impairment(s), we will consider your residual functional capacity and your age, education, and past work experience to see if you can do other work. If you cannot, we will find you disabled. 20 CFR 416.920(f)(1).

At application claimant has the burden of proof pursuant to:

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

Federal regulations are very specific regarding the type of medical evidence required by claimant to establish statutory disability. The regulations essentially require laboratory or clinical medical reports that corroborate claimant's claims or claimant's physicians' statements regarding disability. These regulations state in part:

...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 sure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and

laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

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

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

Applying the sequential analysis herein, claimant is not ineligible at the first step as claimant is not currently working. 20 CFR 416.920(b). The analysis continues.

The second step of the analysis looks at a two-fold assessment of duration and severity. 20 CFR 416.920(c). This second step is a *de minimus* standard. Ruling any ambiguities in claimant's favor, this Administrative Law Judge (ALJ) finds that claimant meets both. The analysis continues.

The third step of the analysis looks at whether an individual meets or equals one of the Listings of Impairments. 20 CFR 416.920(d). Claimant does not. The analysis continues.

The fourth step of the analysis looks at the ability of the applicant to return to past relevant work. This step examines the physical and mental demands of the work done by claimant in the past. 20 CFR 416.920(e).

In this case, this ALJ finds that claimant cannot return to past relevant work on the basis of the medical evidence. The analysis continues.

The fifth and final step of the analysis applies the biographical data of the applicant to the Medical Vocational Grids to determine the residual functional capacity of the applicant to do other work. 20 CFR 416.920(f). After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that claimant is not eligible pursuant to Medical Vocational Grid Rule 202.20 as a guide. In reaching this conclusion, it is noted that taking the evidence as a whole in this case, there is insufficient medical evidence to meet the requirements found at 20 CFR 416.913(b), .913(d), and .913(e). In fact, claimant stipulated at the

administrative hearing that he did not have medical evidence that he could not work. Claimant has the burden of proof pursuant to 20 CFR 416.913(c).

With regards to the radiology reports taken in the month of claimant's application, there were a number of negative findings regarding any acute fractures or subluxation. See [REDACTED] regarding x-ray, cervical, single view; x-ray, cervical, two or three views. Other radiology reports do indicate osteoarthritis, chronic compression fracture, and mild L3 compression fracture of uncertain chronicity. These are existing issues which claimant has had. The osteoarthritis is not documented or shown to be disabling as defined under the law. Thus, these conditions do not meet statutory disability.

It is noted further that claimant's claim that he cannot afford his medication for epilepsy has not been shown to be severe by the evidence presented by claimant. In this regard, see *McKnight v Secretary of Health and Human Services*, 927 F2d 241(6<sup>th</sup> Cir 1990).

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department's actions were correct.

Accordingly, the department's determination in this matter is UPHELD.

/s/ \_\_\_\_\_  
Janice G. Spodarek  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: April 15, 2009

Date Mailed: April 16, 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 mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the mailing date of the rehearing decision.

JGS/cv

cc:

