

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: 2008-14609
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 28, 2008
St. Clair County DHS

ADMINISTRATIVE LAW JUDGE: Marlene B. Magyar

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 May 28, 2008. Claimant personally appeared and testified.

ISSUE

Did the department properly determine claimant is not disabled by Medicaid (MA) and State Disability Assistance (SDA) eligibility standards?

FINDINGS OF FACT

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

- (1) Claimant is a 50-year-old military veteran (USAF) and an early widower who tested HIV+ in 1998 and is a recovering heroin addict (Department Exhibit #1, pgs 4, 7 and 56).
- (2) Claimant stands approximately 6'0" tall and weighs approximately 257 pounds, per self report.

(3) Claimant resides in an outbuilding on his parent's property; he has a valid driver's license and access to a roadworthy vehicle.

(4) Claimant has a high school diploma; his other skills and interests include rhythm guitar, advanced scuba diving and a certificate in stone restoration (Department Exhibit #1, pg 6).

(5) Claimant's past relevant work includes appliance sales (assistant manager), television cable installation and factory forklift operation, which he left in March, 2006, after an on-the-job injury (Department Exhibit #1, pgs 6 and 25).

(6) Claimant previously applied for MA/SDA assistance in September, 2006 and March, 2007; both those applications were denied (Department Exhibit #1, pgs 11 and 70).

(7) On September 27, 2007, claimant reapplied for MA/SDA; when that application was denied, claimant filed a hearing request dated January 14, 2008.

(8) Claimant is alleging disability due to pervasive pain reported in his back/neck/abdomen.

(9) A clinical examination done on January 24, 2008 indicates claimant may have a left inguinal hernia and/or a possible abdominal wall tear; no objective medical tests were submitted to support this opinion (Client Exhibit A, pgs 1-5).

(10) All claimant's other systems were noted to be functioning normally (Client Exhibit A, pg 2).

(11) On February 10, 2006, a lumbar spine MRI was done secondary to claimant's back pain complaints; the results verify mild discogenic disease with mild disc bulging at L3-4 and L4-5 without any disc herniation, nerve root compression or stenosis present (Department Exhibit #1, pg 3).

(12) Claimant is not engaged in any mental health treatment or counseling and he alleges no severe mental, emotional or cognitive deficits except Attention Deficit Hyperactivity Disorder (ADHD), diagnosed in childhood.

(13) A brain CT scan taken during an emergency room visit after claimant had a car accident in October, 2006 was unremarkable for acute process or active bleed; consequently, he was not admitted (Department Exhibit #1, pgs 42-46).

(14) Claimant's treating doctor indicated he was prescribing [REDACTED] and [REDACTED] for claimant's pain management in October, 2007 (Department Exhibit #1, pg 80).

(15) Claimant's MA/SDA appeal was heard on May 28, 2008; at the hearing, claimant reported [REDACTED] and [REDACTED] had been added to his medication schedule.

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).

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

The SDA program differs from the federal MA regulations in that the durational requirement is 90 days. This means that the person's impairments must meet the SSI disability standards for 90 days in order for that person to be eligible for SDA benefits.

The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and to make appropriate mental adjustments, if a mental disability is being alleged, 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908 and 20 CFR 416.929. By the same token, a conclusory statement by a physician or mental health professional that an individual is disabled or blind is not sufficient without supporting medical evidence to establish disability. 20 CFR 416.929.

...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).

...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).

...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).

...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).

...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).

...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).

...Evidence that you submit or that we obtain 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 your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

...In deciding whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive. 20 CFR 416.927(b).

...A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled. 20 CFR 416.927(e).

[As Judge]...We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled.... 20 CFR 416.927(e).

Additionally, Social Security Ruling 96-4p (SSR 96-4p) states in relevant part:

A “symptom” is not a “medically determinable physical or mental impairment” and no symptom by itself can establish the existence of such an impairment. In the absence of a showing that there is a “medically determinable physical or mental impairment,” an individual must be found not disabled at Step 2 of the sequential evaluation process. No symptom or combination of symptoms can be the basis for a finding of disability, no matter how genuine the individual’s complaints may appear to be, unless there are medical signs and laboratory findings demonstrating the existence of a medically determinable physical or mental impairment.

In addition, 20 CFR 404.1529 and 416.929 provide that an individual’s symptoms, such as pain, fatigue, shortness of breath, weakness, or nervousness, will not be found to affect the individual’s ability to do basic work activities...unless medical signs and laboratory findings show that there is a medically determinable physical or mental impairment(s) that could reasonably be expected to produce the symptom(s) alleged.

Claimant does not qualify for the MA/SDA coverage he seeks because he has not presented any objective medical records to establish the presence of a physical or mental condition supportive of a reason for his severe, chronic, debilitating back/neck/abdominal pain complaints. In fact, the objective medical test submitted (MRI) confirms only mild disc bulging in two areas of claimant’s lumbar spine (See Finding of Fact #11 above).

It must be noted the law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant’s pain can be managed to the point where substantial gainful employment can be achieved, a finding of not disabled must be rendered. Claimant’s current prescription medications can reasonably be expected to provide adequate symptom control for his diagnosed condition. Consequently, this

Administrative Law Judge concludes claimant is fully capable of working in a wide variety of unskilled jobs currently existing in the national economy, which is the standard to be applied in disability determination cases. As such, claimant's September 27, 2007 MA/SDA application must remain denied.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly determined claimant is not disabled by MA/SDA eligibility standards.

Accordingly, the department's action is **AFFIRMED**.

/s/ _____
Marlene B. Magyar
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: _____

Date Mailed: _____

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.

2008-14609/mbm

MBM/db

cc:

