

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: 2008-15542

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 26, 2008

Ingham 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, an in-person hearing was held on June 26, 2008. Claimant personally appeared and testified. He was assisted by

[REDACTED]

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, divorced male with congenital glaucoma, first diagnosed in childhood.

(2) Claimant has a general equivalency diploma (GED) and an unskilled work history formerly in his family's restaurant (floor supervisor/cashier/dishwasher) and in a gas station convenience store clerk position (8 years); claimant was fired from the gas station job in 2005 and he has remained unemployed since (Department Exhibit #1, pg 12).

(3) Claimant's glaucoma has resulted in left eye blindness which did not significantly hamper his performance in the above-referenced jobs; claimant's right eye distance vision is 20/20 (Client Exhibit B, pg 1).

(4) Claimant's right eye color vision is compromised but he still sees well enough to read, write, and do simple math; he was issued a valid driver's license until it was suspended in 2005 secondary to an alcohol-related offense.

(5) Claimant has a documented history of bilateral lower extremity peripheral vascular disease.

(6) In May, 2007, claimant was overnight inpatient (5/11/07-5/12/07) for placement of one stent in his right leg and two stents in his left leg which resolved his residual stenosis to less than 10%; as of his June 26, 2008 hearing date claimant had no further hospitalizations (Department Exhibit #1, pg 58).

(7) On the day of hospital discharge, claimant was able to walk without difficulty, his interventional stent puncture sites were well-healed, and an aspirin per day (blood thinner) was initiated (Department Exhibit #1, pg 58).

(8) Claimant's treating vascular specialists found no heart problems, noting claimant said he was disabled due to leg pain (Department Exhibit #1, pg 60).

(9) Claimant's pre-stent physical report dated May 4, 2007, states in relevant part:

There is no known cardiac history. There is no history of chest pain or MI. No history of stroke or amaurosis. A recent Adenosine Cardiolute is normal. He also is disabled, he says from leg pain. It surprises me that someone would disable him out and put him on disability for treatable claudication (Department Exhibit #1, pg 60).

(10) Claimant has an extensive tobacco abuse history; he has repeatedly been medically counseled about the importance of smoking cessation, however, he was still smoking as of his June 26, 2008 disability denial hearing date.

(11) Claimant filed his disability application three months post-stenting, on August 28, 2007 (See also Finding of Fact #6 above).

(12) Claimant alleges he is unable to do any type of substantial gainful work activity secondary to glaucoma combined with lower extremity peripheral vascular disease and reportedly debilitating pain in his neck, back, legs and hands/wrists.

(13) On February 15, 2008, claimant underwent bilateral upper extremity EMG testing (Client Exhibit C, pgs 3-6).

(14) This testing confirms mild right and left carpal tunnel syndrome with no axon loss (Client Exhibit C, pg 3).

(15) There was no evidence for right or left cervical radiculopathy and the attending doctor could not identify the etiology of claimant's reported neck pain (Client Exhibit C, pg 3).

(16) Claimant's high cholesterol is well-controlled on current medication and his right eye glaucoma is stable with standard daily eye drops.

(17) Claimant stands approximately 5'8" tall and weighs approximately 182 pounds; he is right hand dominant.

(18) Claimant resides with his sister; he is independent in all self cares (i. e., bathing, dressing, grooming, etc.).

(19) Since claimant does not have a valid driver's license he uses the public bus or receives rides from his sister to fulfill his transportation needs.

(20) Claimant is not engaged in any mental health treatment or counseling and no severe mental/emotional/cognitive impairments are evidenced by the medical evidence submitted to date.

(21) Likewise, claimant reported he is suffering from excruciating neck, back and bilateral leg arthritis, but no objective medical evidence was submitted to substantiate this allegation.

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.

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).

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 *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

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).

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).

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial gainful activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

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).

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).

Claimant is not disqualified from receiving MA/SDA at Step 1, because he has not been gainfully employed since 2005 (See Finding of Fact #2 above).

At Step 2, claimant's diagnosed physical impairments (left eye blindness and historical peripheral artery disease), in combination, meet the *de minimus* level of severity and duration required for further analysis.

At Step 3, the medical evidence on this record does not support a finding that claimant's diagnosed impairments, standing alone or combined, are severe enough to meet or equal any specifically listed impairments; consequently, the analysis must continue.

At Step 4, the record does not provide sufficient medical evidence to support claimant's allegation that he cannot return to work of the type he did before getting fired in 2005, which appears to be consistent with light work as that term is defined at 20 CFR 416.978(b). Consequently, this analysis could end at Step 4, with a finding that claimant is physically and mentally capable of returning to his past relevant work. However, even if an analysis of Step 5 was required, claimant would be unsuccessful in establishing a legally disabling condition.

At Step 5, an individual's age, education and previous work experience (vocational factors) must be assessed in light of the documented impairments. Claimant is a 50-year-old individual with a high school equivalency education and an unskilled work history. Consequently, at Step 5, this Administrative Law Judge finds, from the medical evidence of record, that claimant also retains the residual functional capacity to perform any number of unskilled medium work jobs existing in the national economy. Therefore, claimant also is not disabled under the MA/SDA definitions because he can return to other medium work, as directed by Medical-Vocational Rule 203.21, in concurrence with the department's State Hearing Review Team (SHRT) decision dated April 7, 2009.

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: August 4, 2009

Date Mailed: August 5, 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.

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