

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: 2008-17931

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

December 2, 2008

Cass 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 December 2, 2008. Claimant did not appear; however, he was represented 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 divorced, 53-year-old high school graduate who tested positive for cocaine use with blood alcohol content at 182 when he was admitted to a local Emergency

Room (ER) in August 2007 after he drove his truck into a tree (Department Exhibit #1, pgs 106 -109 and 111).

(2) Subsequently, claimant returned to prison on a third offense with parole anticipated in February 2010, according to [REDACTED] records submitted post-hearing (See New Medical Evidence, pg 4).

(3) On April 16, 2008, the department received a hearing request from third party liability specialists L [REDACTED] protesting the denial of a November 30, 2007 MA/SDA application filed by [REDACTED] on claimant's behalf.

(4) If this application had been approved, the medical expenses associated with treatment of claimant's motor vehicle accident injuries would have been covered by MA.

(5) Because this application was denied, [REDACTED] proceeded to hearing on December 2, 2008, in their capacity as claimant's authorized hearing representative.

(6) Claimant did not attend the hearing due to his incarceration (See Finding of Fact #2 above).

(7) Claimant was substantially gainfully employed in factory assembly work until he smashed into the tree in August 2007.

(8) X-rays taken at hospital admission revealed claimant had multiple rib fractures and a sternal fracture with a dislocated left hip and left acetabular/left pelvic fractures surgically repaired by open reduction and internal fixation (ORIF) on or about August 28, 2007 (Department Exhibit #1, pgs 114, 120, 127 and 129).

(9) Claimant's post-surgical x-rays, dated August 29, 2007, demonstrate good hardware position and a normally located left hip joint (i. e., no longer dislocated)(Department Exhibit #1, pg 144).

(10) Claimant's remote medical history is positive for a heart attack, not uncommon for patients with an illicit drug history, described as follows:

...The patient has been a heavy smoker for at least 30 years in excess of a pack a day. Has been a heavy drinker most of his adult life and apparently has recently been drinking [REDACTED] and [REDACTED]. He apparently has been released from prison about four months ago and has been doing well until the last two weeks, when he became more distant. Family is aware of past use of [REDACTED]. States that he also has had withdrawal symptoms when he has stopped [REDACTED] (Department Exhibit #1, pg 103).

(11) Claimant's [REDACTED] treatment records from October 2009 indicate he stands 6'1" tall and is medically obese at 250 pounds (BMI=33.05)(See New Medical Evidence, pg 4).

(12) Claimant's most recent prison workplan restricts him from doing jobs with heights but approves athletic shoes for more medically acceptable positions (See New Medical Evidence, pg 16).

(13) Claimant did not appear at the hearing and claimant's authorized representative had no knowledge of what job duties claimant was being assigned in prison, if any.

(14) Claimant's February 20, 2009 left hip x-ray revealed evidence of his acetabulum hardware and left hip prosthesis being in satisfactory position (See New Medical Evidence, pg 24).

(15) Likewise, claimant's September 17, 2009 right ankle x-rays reveal a remote, healed right ankle fracture which was initially secured by one screw transfixing claimant's distal fibula and tibia (See New Medical Evidence, pg 22).

(16) These x-rays showed the screw had broken but the position of the screw fracture fragments was satisfactory and screw removal was not medically recommended (See New Medical Evidence, pg 4).

(17) An October 2009 physical assessment of claimant's right ankle notes minor deformity; however, claimant exhibited full range of motion in that ankle (See New Medical Evidence, pg 4).

(18) On July 15, 2009, claimant was assessed by the prison psychologist because he was feeling anxious, irritable and dreading his future parole (See New Medical Evidence, pg 14).

(19) Claimant's motor function and eye contact were good, he was fully oriented with spontaneous, coherent, relevant and goal directed speech, and he showed no signs of psychological distress but a few follow-up visits were authorized to address claimant's anger and failure issues (See New Medical Evidence, pg 14).

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).

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

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).

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).

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 August 2007, although his Department of Corrections (DOC) records indicate he may have been doing assigned work activities in prison (See also Finding of Fact #12 and #13 above).

At Step 2, claimant's diagnosed physical impairments, in combination, have likely left him with some range-of-motion limitations and pain. However, it must be noted no severe mental impairments have been shown, and claimant's residual pain symptoms appear capable of adequate pain management as long as prescription medication compliance is maintained especially in light of his complete absence from the hearing to testify as to the pain levels he experiences, if any.

Furthermore, it must be noted the law does not require an applicant to be completely symptom free before a lack of disability can be rendered. In fact, if an applicant's symptoms can be managed to the point where substantial gainful employment can be achieved, a finding of not disabled must be rendered. Nevertheless, ruling any ambiguities about pain in claimant's favor

despite his absence from the hearing, this Administrative Law Judge finds the *de minimus* level of severity and duration has been met, thus requiring further analysis.

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

At Step 4, claimant did not appear at the hearing; therefore, no reliable testimony was presented to establish the exertional requirements of claimant's previous unskilled jobs. As such, this Administrative Law Judge cannot make a reasonable finding about whether claimant was capable of returning to any of them during the relevant period covered by claimant's disputed application. Under these circumstances, this analysis must continue.

The very last step in the required analysis is Step 5. At this level, an individual's age, education and previous work experience (vocational factors) must be assessed in light of the documented impairments. Claimant is a 53-year-old individual with a high school education and an unskilled work history. Consequently, at Step 5, this Administrative Law Judge finds, from the medical evidence of record, that claimant retains the residual functional capacity to perform at least unskilled light work, as that term is defined above.

Claimant's biggest barriers to employability appear to be his lack of recent connection to the competitive work force due to incarceration and his felony record. When claimant is paroled, he should seek assistance from [REDACTED] for assistance with job training and/or placement consistent with his skills, interests and abilities. Claimant is not disabled under the MA/SDA definitions, because he can return to light work as directed by Medical-Vocational Grid Rule 202.13.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly denied claimant's November 30, 2007 MA/SDA application.

Accordingly, the department's action is AFFIRMED.

/s/

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

Date Signed: February 9, 2010

Date Mailed: February 9, 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 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.

MBM/db

cc:

