

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: 2008-21429

Issue No: 2009/4031

Case No:

[REDACTED]

Load No:

Hearing Date:

September 25, 2008

Muskegon 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 September 25, 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 single, 55-year-old high school graduate with an extensive substance abuse history (cocaine/alcohol/tobacco) who had no severe health problems or ongoing medical care until he presented to a local emergency room on January 4, 2008 in severe chest pain (Department Exhibit #1, pgs 38-40).

(2) A myocardial infarction (heart attack) was diagnosed by EMG and claimant underwent emergent angioplasty with stenting of his right coronary artery and his first and second obtuse marginal arteries (Department Exhibit #1, pgs 1-37).

(3) Claimant admitted to cocaine use on a weekly basis, with the most recent use being four days before hospitalization on New Year's Eve (Department Exhibit #1, pgs 8 and 24).

(4) Likewise, claimant was drinking 40 to 80 ozs. of beer daily and smoking a half pack of cigarettes daily at admission (Department Exhibit #1, pg 37).

(5) Claimant lives with his mother, he does not have a valid driver's license and he has not been gainfully employed since performing heavy manual labor (70-80 pounds) at a sawmill more than ten years ago, per self report.

(6) On January 8, 2008, claimant applied for disability-based MA/SDA for assistance with the medical expenses associated with his heart attack (MA) and a monthly cash grant (SDA).

(7) When the department denied that application claimant filed a hearing request dated May 12, 2008.

(8) Claimant alleges ongoing chronic fatigue, shortness of breath and lower back/left shoulder/chest pain causes him to be unable to engage in any type of substantial gainful work activity.

(9) Claimant stands approximately 5'11" tall and weighs approximately 188 pounds; he is right hand dominant.

(10) Claimant's cardiac hospital stay was uneventful and he was discharged on (and remains on) a standard post-infarction medication schedule which includes an [REDACTED]

daily with high blood pressure/high cholesterol maintenance medications; additionally, he reported using over-the-counter [REDACTED] for pain management.

(11) Claimant's January 29, 2008 post-hospitalization check-up indicates he was progressing well from the cardiac specialist's standpoint; tobacco/alcohol/cocaine abstinence was strongly recommended (Department Exhibit #1, pgs 44-46).

(12) Additionally, a Medical Examination Report (DHS-49) dated March 24, 2008 also indicates claimant had improved and had no physical limitations (Department Exhibit #1, pgs 40 and 41).

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

(14) A January 19, 2009 independent physical examination opines claimant would be medically incapable of returning to heavy manual labor due to apparent intermittent chest pain (angina), for which sublingual nitroglycerin has been prescribed (See also Finding of Fact #5 above).

(15) On that date, claimant's gait was normal, his spine was straight without deformity, his lower extremity strength was normal and he had full fine/gross upper extremity movement with good grip strength at 76 pounds on his dominant right side and 67 pounds on his left (New Medical Evidence, pg 2).

(16) Additionally, claimant's February 13, 2009 lumbar spine x-rays do not evidence any severe impairments, but show only mild osteoarthritis and mild spurring exist between L3-4 and L5-S1 (New Medical Evidence, pg 3).

(17) Left shoulder x-rays taken on that same date reveal absolutely no abnormalities (New Medical Evidence, pg 4).

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.

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 in over ten years (See Finding of Fact #5 above).

At Step 2, claimant's diagnosed physical impairments (minimal arthritis/intermittent angina/high blood pressure/high cholesterol) may cause some pain; however, this Administrative

Law Judge finds claimant's complaints of constant, debilitating, excruciating pain and fatigue to be highly exaggerated in light of the existing diagnoses. Furthermore, it must be noted all of claimant's symptoms appear capable of adequate management/stabilization with the current prescription medications and over-the-counter [REDACTED] claimant admits to using.

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 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 in claimant's favor, this Administrative Law Judge will find the *de minimus* level of severity and duration necessary to continue this analysis has been met.

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 supports a finding claimant is not and can never be cleared to return to heavy exertional work activity. As such, this analysis must continue.

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 55-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 medium work, as that term is defined above. This finding is consistent with the department's State Hearing Review Team (SHRT) decision dated March 30, 2009. Put simply, when taken as a whole, the evidence in this file fails to meet the requirements necessary to qualify for disability-based MA or SDA. The evidence shows claimant

is not disabled because he has the residual functional capacity to return to other medium work, as directed by Med-Voc Rule 203.14.

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: October 19, 2009

Date Mailed: October 19, 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.

MBM/db

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