

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: 2008-23223

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

October 21, 2008

Ottawa 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 October 21, 2008. Claimant personally appeared and testified. He was assisted by [REDACTED], a patient advocate from [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 nearly 38 years old (DOB: [REDACTED])
- (2) Claimant stands approximately 5/10" tall and is medically obese at approximately 220 pounds (BMI= 31.6).

(3) Claimant does not need assistance with any personal care or grooming activities except cutting his toenails, per self report.

(4) Claimant is divorced and he currently resides with a friend in [REDACTED], [REDACTED]; he has no money for rent but he does light cleaning and other chores in exchange for his share of the monthly rental payment, per self report.

(5) Claimant graduated from high school with honors; he has a valid driver's license but does not ever drive, per self report.

(6) On December 26, 2007 (at age 36), claimant applied for disability-based medical coverage (MA) and a monthly cash grant (SDA) based on his history of lower back problems dating to 2000 (Department Exhibit #1, pg 95).

(7) Claimant worked as an electrical journeyman/foreman (skilled/heavy exertional activity) until September 2002 when he was laid-off; he has been unemployed since then (Department Exhibit #1, pg 97).

(8) On September 18, 2007, claimant underwent bilateral foraminotomies (for decompression) with complete laminectomies at L4 and L5 (Department Exhibit #1, pg 87).

(9) Claimant's previous treating orthopedist and an examining neurologist in [REDACTED] confirm 4 prior back surgeries were done before 2004 (decompressions/fusions) to repair multilevel disc herniations in claimant's lower lumbar spine (Department Exhibit #1, pgs 4-7 and 16).

(10) A September 25, 2005 [REDACTED] done in [REDACTED] states in relevant part:

Most importantly, clinically [claimant] has done extremely well over the past 16 months. By this, it is evident that the degree of low back pain and right lower extremity pain has improved greatly to the point where his back pain is only intermittent as is his right

lower extremity pain. His examination has shown remarkable improvement in that he has normal motor function except for slight weakness of the right extensor hallucis longus.

Moreover, deep tendon reflexes are now equal and symmetrical in both lower extremities. He still has, however, decreased pin sensation on the right lateral thigh and right leg which is unchanged. In addition to the above, [claimant] ambulates without list or limp. He is quite agile in all his movements and does not appear to be having pain that would require any further surgical intervention at this time (Department Exhibit #1, pg 17).

(11) This examining doctor opined in 2005 claimant should be restricted from lifting over 25 pounds and doing any repetitive bending, twisting and stooping to prevent further injury; consequently, claimant's decision not to return to his past heavy electrical work gained credibility by 2005 (Department Exhibit #1, pg 18)(See also Finding of Fact #7 above).

(12) By 2006, claimant started treating with a [REDACTED] specialist ([REDACTED]) for chronic bilateral lower extremity pain complaints and significant lower back pain which was non-responsive to all conservative treatment (e. g., physical therapy/pain injections/pain medication); consequently, this doctor decided the September 2007 corrective surgery referenced in Finding of Fact #8 above should be done.

(13) Claimant's November 2007 post-operative progress note indicates claimant subjectively reported he was 75 to 80% better than preoperatively (Client Exhibit A, pg 2).

(14) On physical examination that day, claimant achieved full lower extremity range-of-motion and strength bilaterally with some mild impairment in sensation to touch (i. e., numbness) still present in his left foot and calve (Client Exhibit A, pg 2).

(15) Claimant reported progress in the physical therapy he was doing twice weekly; consequently, a three to four month follow-up visit was recommended to make sure claimant was

continuing to improve, however, no subsequent follow-up doctors' reports were submitted (Client Exhibit A, pg 3).

(16) Claimant reported at hearing he has been attending outpatient [REDACTED] [REDACTED] counseling regularly to deal with depression and generalized anxiety secondary to his inability to work in his chosen field and his history of orthopedic problems.

(17) A 2007 [REDACTED] counseling report notes claimant was suffering from Major Depression Disorder (recurrent/severe, without psychotic features)(Department Exhibit #1, pg 78).

(18) An updated report (10/08) added Alcohol Abuse (in early remission) and Cocaine Dependence (in early remission) to claimant's mental impairment list (Client Exhibit C, pg 1).

(19) Claimant reported at hearing he last used cocaine six months earlier and he still drinks alcohol occasionally since he does not believe his current use is a problem for him (Client Exhibit C, pg 1).

(20) Claimant's only antidepressant medication as of his October 21, 2008 hearing date was [REDACTED], with [REDACTED] added as a sleep aid (Client Exhibit C, pg 1).

(21) Additionally, claimant's treating doctor has prescribed [REDACTED] and [REDACTED] for his residual pain symptoms since his last surgery in September 2007 (See also Finding of Fact #8 and #12 above).

(22) Claimant's only other documented physical problem is high blood pressure, under adequate control on current medication.

(23) Likewise, claimant's October 2008 mental health status examination states in relevant part:

[Claimant] appears his stated age. He is alert and oriented. He moves freely. His gait and station are normal. His grooming and

hygiene are good. He is dressed casually. His speech is normal tone, volume, relevant, goal directed and non pressured. He has rare episodes of stuttering. His thoughts are organized. There is no evidence of delusional thinking, hallucinations, obsessions, compulsions, or other psychotic distortions. He is not reporting nightmares. He is not suicidal or homicidal. He is able to contract for safety. His memory, concentration, and cognition are intact. Judgment and insight are adequate. He may be impulsive with respect to the use of substances. Insight is developing (Client Exhibit C. pg 1)(See also Finding of Fact #19 above).

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.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

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).

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 he got laid-off in 2002 (See Finding of Fact #7 above).

At Step 2, claimant's longstanding orthopedic treatment history has left him with some reported pain, range-of-motion limitations and work restrictions. However, it must be noted no severe mental impairments have been shown, and claimant's remaining physical symptoms after his corrective 2007 lumbar surgery appear capable of adequate pain management with the medications currently being prescribed.

Furthermore, 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, claimant's medically managed lower lumbar/lower extremity post-surgical residuals 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 currently 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 reveals claimant is not and can never be medically cleared to return to his former semi-skilled, heavy exertional work. 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 young individual with a high school education and a non-transferable, semi-skilled work history. Consequently, at Step 5, this Administrative Law Judge finds, from the medical and psychological evidence of record, that claimant retains the residual functional capacity to perform sedentary or light work, as those terms are defined above.

Claimant's biggest barrier to employability appears to be his lack of recent connection to the competitive work force. Claimant should be referred to [REDACTED] [REDACTED] for cooperation with their assistance in 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 other sedentary or light work, as directed by Medical-Vocational Rules 201.28 and 202.21.

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: November 9, 2009

Date Mailed: November 10, 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

cc:

[REDACTED]