

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: 2008-27277

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

November 19, 2008

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Rhonda P. Craig

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 November 19, 2008. Claimant was represented by [REDACTED] with [REDACTED] [REDACTED]

ISSUE

Is claimant disabled for the purposes of the Medical Assistance and State Disability Assistance programs?

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 applied for Medical Assistance and State Disability Assistance benefits on April 23, 2008. Claimant requested Medical Assistance retroactive to January 2008.

(2) Claimant's impairments have been medically diagnosed as: intervertebral disc disorder with possible myelopathy, severe weakness in the right leg, bronchitis (resolved) and degenerative arthritis in the lumbar spine and hand.

(3) Claimant's physical symptoms are constant severe back pain and partial incontinence of the bladder.

(4) Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.

(5) Claimant is 42 years of age.

(6) Claimant has an eighth grade education.

(7) Claimant has employment experience in home improvement, temporary services and as a general laborer.

(8) Claimant has significant limitations on physical activities involving standing (no more than 20 minutes at a time), walking (no more than approximately a half block at a time), bending, lifting and stooping. Claimant has severe limited range of motion in the lumbar spine.

(9) The department found that claimant was not disabled and denied claimant's application on May 19, 2008.

(10) Upon claimant's request for a hearing, medical evidence was submitted to the State Hearing Review Team. The State Hearing Review Team determined that claimant was not disabled for the programs.

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).

The Department of Human Services conforms to state statute in administering the State Disability Assistance program.

2000 PA 294, Sec. 604, of the statute states:

Sec. 604. (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempted from the supplemental security income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

- (a) A recipient of supplemental security income, social security, or medical assistance due to disability or 65 years of age or older.
- (b) A person with a physical or mental impairment which meets federal supplemental security income disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

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

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.

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).

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).

Here, claimant's impairment or combination of impairments is severe but does not meet nor is it the equivalent of a listed impairment. Claimant is also unable to do past work. Therefore, the determination of disability will be based on claimant's residual functional capacity.

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).

Claimant's impairments and limitations have a major effect upon claimant's ability to perform basic work activities. Claimant is unable to perform the full range of activities for even sedentary work as defined in 20 CFR 416.967(a) because of the nature of the limitations. The total impact caused by the combination of medical problems suffered by the claimant must be considered. The combination of claimant's impairments result in a severe impairment which limits claimant's ability to work. 20 CFR 404.1529.

In the present case, claimant has a number of limitations which severely affect his ability to perform basic work activities. Claimant has been diagnosed with degenerative arthritis in the lumbar spine and intervertebral disc disorder with possible myelopathy. He complains of constant pain in his back which severely limits his ability to stand, walk, bend, lift and stoop.

This Administrative Law Judge does take into account claimant's complaints of pain in that the diagnoses do support the claims. Subjective complaints of pain where there are

objectively established medical conditions that can reasonably be expected to produce the pain must be taken into account in determining a claimant's limitations. *Duncan v Secretary of HHS*, 801 F2d 847, 853 (CA6, 1986); 20 CFR 404.1529, 416.929.

The examining physician noted that claimant has right leg weakness and has difficulty walking. He indicates he can never lift 25 pounds or more and can stand and walk for less than two hours in a day and sit for less than six hours a day. He indicated that he could not use his right arm or hand for pushing or pulling in repetitive actions and could not use his right leg for repetitive actions. In a report dated [REDACTED] the physician noted that claimant's condition is deteriorating. He was dragging his right leg on examination. He has atrophy of the right thigh muscles to some extent and lower thigh muscles. The right thigh appeared to be one half inch smaller than the left thigh. He is not able to raise or lift up his right leg. The physician further noted mild swelling at the PIP joints. His deep tendon reflexes are mildly decreased in his right leg. The physician concluded that claimant appeared to have some type of neurological disorder. He indicated also that he had mild arthritis affecting both hands and recurrent lumbar pain. He noted that claimant's lower back movements are restricted to 40 to 50 percent of normal range. The physician noted that x-rays showed degenerative arthritis changes in both hands and in his lumbar spine. Considering the medical evidence and claimant's testimony, it appears claimant would be unable to perform the full range of activities for even sedentary work. *Wages v Sec of HSS* 755 F2d (6th Cir 1985). Therefore, claimant is disabled for the purposes of the Medical Assistance and State Disability Assistance programs. Rule 201.00(h) of Federal Rule 20 CFR 404, Subpart P, Appendix 2.

heading

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant is medically disabled under the Medical Assistance and State Disability Assistance programs as of January 1, 2008. Therefore, the department is ordered to initiate a review of the application of April 23, 2008, if not done previously, to determine claimant's non-medical eligibility. The department shall inform the claimant of the determination in writing. The case shall be reviewed in February 2010.

/s/ _____
Rhonda P. Craig
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: February 18, 2009

Date Mailed: February 20, 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.

2008-27277/rpc

RPC/db

cc:

