

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: 2008-29286

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

November 20, 2008

Dickinson 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 November 20, 2008. Claimant and his mother 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 an unmarried, 38-year-old unemployed male with two children who resided with his mother for a time after suffering an acute focal infarct (stroke) in his left cerebral peduncle on July 31, 2008 (Department Exhibit #1, pgs 23-29).

(2) Claimant was transferred to [REDACTED] for further evaluation and treatment; his carotid Dopplers, echocardiogram and cerebral angiogram were normal, but he was put into physical, occupational and speech therapy to work on the residual, right-sided weakness and cognitive confusion secondary to his stroke (Department Exhibit #1, pgs 14 and 40-41).

(3) On August 4, 2008, claimant filed an MA application for ongoing disability benefits which was denied by written notice dated August 22, 2008; however, claimant's SDA (cash application) was approved until review in November 2008 (Department Exhibit #1, pgs 1 and 2).

(4) Claimant requested a hearing after his MA application denial, held November 20, 2008.

(5) At hearing, claimant's record was extended for the collection of updated medical evidence to be re-submitted to the department's State Hearing Review Team (SHRT).

(6) On September 8, 2009, SHRT issued a post-hearing decision which re-affirmed their first denial of disability based on a finding claimant was capable of unskilled light work despite his stroke residuals.

(7) Claimant alleges his right-sided weakness and left eyelid droop (ptosis) cause him to be completely incapable of performing any type of substantial gainful work activity.

(8) Claimant's September 4, 2008 eye examination confirms 20/20 left and right eye vision (normal), but states the ptosis causes claimant to function with his right eye only; simple left eye exercises were prescribed and claimant was instructed to engage in general activities as tolerated (New Medical Evidence Eye Exam Report, pgs 1-4).

(9) Claimant stated at hearing he used a cane for right-sided balance and stability for approximately one month after his stroke.

(10) A November 19, 2008 physical examination done in [REDACTED] verifies tenderness on the right side with all extremities grossly intact; claimant was discharged fully ambulatory and encouraged to drink plenty of fluids, rest and continue all his current medications which are [REDACTED] and [REDACTED] (New Medical Evidence, [REDACTED] Report and Medical Examination Report, pgs 1-6).

(11) Claimant stands approximately 5'10" tall and weighs approximately 195 pounds; he was residing independently in low income [REDACTED] housing as of his hearing date.

(12) Claimant has an unskilled, medium exertional work history unloading castings and driving hy-low; he was fired from his most recent job in April 2008 (three months before his stroke) and he has remained unemployed since then (Department Exhibit #1, pg 9).

(13) In October 2008, claimant was diagnosed with a benign (non-cancerous) hemorrhagic cyst in his right kidney; no appreciable side-effects are noted and claimant's liver, pancreas, spleen, adrenal glands and aorta/vena cava were all normal (New Medical Evidence, [REDACTED] Records).

(14) Claimant's only other documented impairments are asymptomatic high cholesterol, a congenital heart defect (non severe) and adult Attention Deficit Disorder (ADD) currently adequately controlled with [REDACTED]

(15) Claimant did not drive before his stroke and he has continued to refrain from doing so since then.

(16) Claimant's October 14, 2008 physical examination notes he was capable of speaking in full sentences and able to do chores himself at home; additionally, his gait was

normal, his bilateral motor strength was normal and his mood was normal (New Medical Evidence Progress Report).

(17) Claimant denied any other acute concerns except an inability to look fully upward with poor left eye movement and upward gaze (New Medical Evidence Progress Report).

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 a disability allowance at Step 1, because he has not been gainfully employed since he got fired in April 2008 (See Finding of Fact #12 above).

At Step 2, claimant's stroke residuals have left him with some reported pain, range-of-motion limitations and left eye restrictions. However, it must be noted no severe mental impairments have been shown, and claimant's remaining physical symptoms subsequent to the stroke appear fully capable of adequate management with 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 stroke residuals, ADD and high cholesterol 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 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 claimant's contention he cannot return to his former foundry work as that job consisted of excessive standing, lifting, carrying and hy-low driving which are beyond his current capabilities given his stroke residuals. As such, this analysis must continue.

At Step 5, an applicant'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 equivalency education (GED) 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 light work, as that term is defined above, consistent with the post-hearing SHRT recommendation dated September 8, 2009.

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 assistance with job training and/or placement consistent with his current skills, interests and abilities. Claimant is not disabled under the MA/SDA definitions, because he can return to other light work, as directed by Medical-Vocational Grid Rule 202.20.

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 or SDA eligibility standards.

Accordingly, the department's denial of claimant's August 4, 2008 MA application and the subsequent denial of SDA benefit continuation based upon improvement at review is AFFIRMED.

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

Date Signed: November 16, 2009

Date Mailed: November 17, 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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