

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: 2008-29559

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

December 16, 2008

Kalamazoo County DHS

ADMINISTRATIVE LAW JUDGE: Jana Bachman

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 claimant's request for a hearing. After due notice, an in-person hearing was held on December 16, 2010. Claimant was represented by [REDACTED]

ISSUE

Whether claimant is disabled has established disability for Medical Assistance (MA).

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) June 5, 2008, claimant applied for MA and SDA.
- (2) August 18, 2008, the Medical Review Team (MRT) denied claimant's application. Department Exhibit A. On or about August 2008, claimant reapplied for assistance. The MRT approved claimant's application for SDA and denied claimant's application for MA. Department Exhibit A, pg 1.

(3) August 20, 2008, the department sent claimant written notice that the application was denied.

(4) August 25, 2008, the department received claimant's timely request for hearing.

(5) September 9, 2008, the State Hearing Review Team (SHRT) denied claimant's application. Department Exhibit B.

(6) December 16, 2008, the in-person hearing was held. Prior to the close of the record, claimant requested the record be left open for additional medical evidence. Claimant waived the right to a timely hearing decision. March 12, 2009, after review of all medical evidence, the SHRT again denied claimant's application. SHRT Decision, 3-12-09. Good cause was found to reopen the record for additional medical evidence. The entire medical packet was submitted to SHRT for a third time. The SHRT again denied claimant's application. SHRT Decision, 7-31-09.

(7) Claimant asserts disability based on impairments caused by multiple back surgeries.

(8) Claimant testified at hearing. Claimant is 42 years old, 6'1" tall, and weighs 180 pounds. Claimant completed high school and a few college courses. He is able to read, write, and perform basic math. Claimant's driver's license is suspended. Claimant cares for his needs at home with assistance.

(9) Claimant's past relevant employment has been in construction, factory labor, fast food crew and general labor.

(10) May 28, 2008, claimant visited his neurosurgeon post operative L1 corpectomy with compression of nerve root, thecal sac, and spinal cord and a T-12 through L-2 open reduction and internal fixation using a retroperitoneal anterior approach. These surgeries were

done on May 18, 2008. Surgeon notes that the incision site is healing well without complication.

Patient continues to have some back and incisional pain. Department Exhibit A, pg 9.

July 3, 2008, claimant underwent an x-ray of the lumbar spine that revealed stable changes secondary to thoracolumbar fixation. Department Exhibit A, pg 8. Also on July 3, 2008,

claimant was examined by his neurosurgeon and found to have received approximately 360 tablets of high dose narcotics from multiple sources over a period of eleven days. Doctor

indicated this is excessive and all pain medications will be handled through the medicine clinic.

Patient complained of some wound discomfort with back discomfort improving. Doctor advised

that claimant is to pick up his walking to at least four miles per day. He is instructed to stop

smoking and using any narcotic contained compounds. Department Exhibit A, pg 7. August 14,

2008, claimant was again examined by his neurosurgeon. Claimant complained that he is still

having back pain especially if he walks too long. He has been walking two and one-half miles

per day. He reports no pain, numbness or tingling in his legs. Physical exam revealed a healthy

appearing individual in no distress. Patient was wearing a brace. Motor strength in both legs

was normal. Tendon reflexes in the leg were normal. Gait and station were normal as well as

coordination of the arms and legs. Patient was able to heel and toe walk. X-rays revealed a

progression of deformity at the thoracal lumbar junction. Department Exhibit A, pgs 155-156

(11) November 21, 2008, claimant was examined by his neurosurgeon. Claimant had recently undergone a second back surgery. X-rays demonstrate excellent fusion. Patient reports

only minor back pain at this point and he is tolerating the use of his brace. He is increasing his

activity. Claimant Exhibit A, pg B4. January 2, 2009, claimant visited his neurosurgeon.

Treatment notes indicate patient is still having back pain but x-rays look very, very good. Doctor

opines that it is just going to be a matter of time before the pain resolves. The doctor plans to get

him out of his back brace over the next twenty-one days and then institute physical therapy.

Claimant Exhibit A, pg B3. Neurosurgeon opined claimant is capable of lifting 20 to 25 pounds with an avoidance of bending, twisting, or straining. Claimant Exhibit, pg B1-2.

(12) On or about February 16, 2008, claimant experienced chest pain and was examined at hospital. Objective medical testing revealed no acute heart disease. Claimant was diagnosed with atypical angina. Department Exhibit A, pgs 54-110. July 23, 2008, claimant's cardiologist completed a Classification of Patients with Disease of the Heart and indicated that claimant has a function capacity at Class 2; patient's with cardiac disease resulting in slight limitation of physical activity and Therapeutic Classification of Class B; patients with cardiac disease whose ordinary physical activity need not be restricted but who should be advised against severe or competitive physical efforts. Department Exhibit A, pg 113.

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).

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.

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).

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).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

If an individual fails to cooperate by appearing for a physical or mental examination by a certain date without good cause, there will not be a finding of disability. 20 CFR 416.994(b)(4)(ii).

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).

At Step 1, claimant is not engaged in substantial gainful activity and so is not disqualified from receiving disability at Step 1.

At Step 2, the objective medical evidence of record indicates that claimant suffered back injuries during May 2008 and underwent surgery. During July 2008 it was found that claimant's condition was improving but he had some back pain. Objective medical testing later revealed that claimant's back had destabilized and he underwent a second surgery in October 2008. Objective medical testing in January 2009, revealed claimant's back to be healing well and stable. He was to be off his back brace and undergo rehabilitative physical therapy. In January 2009, claimant's neurologist physician opined claimant could lift 20 to 25 pounds with avoidance of bending, twisting or straining. Claimant has no neurological impairments. In February 2008, claimant suffered chest pain and was found to have atypical angina. Objective medical testing revealed no abnormal heart function; however, claimant's cardiologist opined that claimant has Class 2 and Class B heart disease indicative of the need for mild restrictions in daily activity. Finding of Fact 10-12; American Heart Association, Functional Capacity and Objective Assessment for Patients with Diseases of the Heart.

At Step 2, the objective medical evidence of record is not sufficient to establish that claimant has severe impairments that have lasted or are expected to last 12 months or more and prevent all employment for 12 months or more. Accordingly, claimant is disqualified from receiving disability at Step 2.

At Step 3, claimant's impairments do not rise to the level necessary to be specifically disabling by law.

At Step 4, claimant's past relevant employment has been in construction, factory labor, fast food crew, and general labor. See discussion at Step 2 above. Finding of Fact 9-12. Due to claimant's back surgery it appears that performing construction work and heavy factory labor would not be possible. The evidence appears to establish that claimant would be capable of performing general light labor and fast food crew duties that do not involve heavy lifting.

At Step 4, the objective medical evidence of record is not sufficient to establish that claimant has severe impairments that have lasted or are expected to last 12 months or more and prevent him from performing the duties required by his past relevant employment for 12 months or more. Accordingly, claimant is disqualified from receiving disability at Step 4.

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).

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).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

At Step 5, see discussion at Step 2 above. Finding of Fact 10-12.

At Step 5, the objective medical evidence of record is sufficient to establish that claimant is capable of performing at least light work duties. Considering claimant's Vocational Profile (younger individual, high school graduate, and history of unskilled work) and relying on Vocational Rule 202.20, claimant is not disabled. Accordingly, claimant is disqualified from receiving disability at Step 5.

Claimant does not meet the federal statutory requirements to qualify for disability. Accordingly, claimant does not meet the disability requirements to qualify for Medical Assistance based on disability and the department properly denied his application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides claimant has not established disability for Medical Assistance.

Accordingly, the department's action is, hereby, UPHELD.

/S/

Jana Bachman
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: August 18, 2010

Date Mailed: August 19, 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 mailing 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.

JB/sd

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