

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: 2008-30745
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 17, 2009
Cheboygan 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 November 17, 2009. Claimant and his sister 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, 54-year-old chronic smoker (1+ packs per day) with a limited education (8th grade only) who resides with his brothers in [REDACTED]
- (2) On April 1, 2008, claimant applied for disability-based MA/SDA.

(3) When the department denied that application, a timely hearing request was submitted on claimant's behalf to protest the denial.

(4) Claimant was formerly a lumberman but he got laid off for lack of work in 1995 and he has never done anything but intermittent odd jobs since then (Department Exhibit #1, pgs 15, 42 and 52).

(5) On May 30, 2008, claimant underwent an independent medical examination.

(6) The examining doctor described claimant as an asthenic individual (i. e., of slender physique) at 5'4" tall and 128 pounds (Department Exhibit #1, pg 51).

(7) Additionally, he noted claimant was in obvious distress when walking, and also, claimant exhibited moderate dorsal lumbar/left hip range of motion restrictions despite good effort during testing (Department Exhi9bit #1, pg 51).

(8) Specifically, this doctor's relevant findings are as follows:

...He cannot stand with his legs together and when he does, a prominent scoliosis with concave to the right appears. Standing straight for him means bent to the right side...

...[Claimant's back problem] probably is a combination of multiple small traumas throughout his years working as a lumberman; however, he does have a prominent scoliosis and what appears to be a foreshortened left leg. The range of motion in the left hip is impaired. I tend to think clinically much of his problem with walking and much of his pain is left hip, rather than his abdomen or back. His range of motion of the dorsal lumbar spine is modestly impaired as well...

...I suspect that the left hip, rather than the left side of the abdomen, is the more significant factor with this problem. The abdominal examination was unremarkable...(Department Exhibit #1, pgs 49-51).

(9) Claimant's treating doctor's opinion is extremely consistent with the independent medical examiner's conclusions, and also, he presents a detailed assessment of claimant's

musculoskeletal impairments through office notes dated November 18, 2008, which state in relevant part:

...[Claimant] wanted a handicap sticker for his car. The reason for this is that he has had compression fractures at T8 and T9, his thoracic spine, he has severe osteoarthritis and scoliosis of his lumbar area, and hip pain from osteoarthritis. He is very debilitated from this. He can walk, he says, about 50 yards before he has to stop and rest. He also has some cognitive impairments...

...He weighs 123 pounds. He has limited flexion and extension of the thoracic and lumbar spine. He walks with antalgic gait seeming to limit more on the right side. There is muscle wasting...(Client Exhibit A, pgs 73 and 77).

(10) Claimant's treating doctor has diagnosed claimant with osteoarthritis of the thoracic and lumbar spines and severe rotoscoliosis (Client Exhibit A, pgs 73 and 77).

(11) This diagnosis is based on claimant's medical history, which is positive for compression fractures at T8 and T9 with 10% and 30% superior plate wedge compression, respectively (Client Exhibit A, pg 75).

(12) A June 11, 2008 office report from claimant's treating doctor describes claimant as gaunt, very thin with muscle wasting and (old) compression fractures in the thoracic spine, as well as significant spurring and decreased disc space more advanced than generally expected in patients of claimant's age (Client Exhibit A, pg 72).

(13) [REDACTED] is being prescribed for pain four times daily, but claimant testified it does very little to relieve his ongoing severe pain, which is exacerbated if he engages in any prolonged physical activities (e. g., walking, bending, standing, twisting, lifting, carrying, etc.).

(14) After conducting a post-hearing review of claimant's medical records, the department's State Hearing Review Team (SHRT) issued a decision on January 7, 2010 stating

claimant has no severe impairments which would prevent him from engaging in substantial gainful work activity.

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 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.

When determining disability, the federal regulations require several factors to be considered, including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities.

20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitations in light of the objective medical evidence presented. 20 CFR 416.929(c)(94).

Federal regulations require that the department use the same operative definition for "disabled" as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

"Disability" is:

...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

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier-of-fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier-of-fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). In this case, claimant is not working and has

not been engaged in substantial gainful work activity for at least 15 years; consequently, the analysis must continue.

Secondly, in order to be considered disabled for purposes of MA, a person must have a severe impairment. 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual's physical or mental ability to perform basic work activities. Basic work activities means 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 purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the department may only screen out claims at this level which are “totally groundless” solely from a medical standpoint. The *Higgs* court used the severity requirement as a “*de minimus* hurdle” in the disability determination. The *de minimus* standard is a provision of a law that allows the court to disregard trifling matters.

In this case, claimant has presented the required medical data and evidence necessary to support a finding that claimant has significant physical limitations upon his ability to perform basic work activities.

Medical evidence has clearly established that claimant has an impairment (or combination of impairments) that has more than a minimal effect on claimant's work activities. See Social Security Rulings 85-28, 88-13, and 82-63.

In the third step of the sequential consideration of a disability claim, the trier-of-fact must determine if the claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the claimant's medical record will not support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

In the fourth step of the sequential consideration of a disability claim, the trier-of-fact must determine if the claimant's impairment(s) prevents claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical findings, that claimant cannot return to lumbering because he is physically incapable of that exertional level (i. e. heavy/unskilled).

In the fifth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing other work. 20 CFR 416.920(f). This determination is based upon the claimant's:

- (1) residual functional capacity defined simply as "what can you still do despite your limitations?" 20 CFR 416.945;

- (2) age, education, and work experience, 20 CFR 416.963-.965; and
- (3) the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her limitations. 20 CFR 416.966.

See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once claimant reaches Step 5 in the sequential review process, claimant has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services*, 735 F2d 962 (6th Cir, 1984). At that point, the burden of proof is on the state to prove by substantial evidence that the claimant has the residual functional capacity for substantial gainful activity.

After careful review of claimant's extensive medical record and the Administrative Law Judge's personal interaction with claimant at the hearing, this Administrative Law Judge finds that claimant's exertional impairments render claimant unable to engage in a full range of even sedentary work activities on a regular and continuing basis. 20 CFR 404, Subpart P. Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986). The department has failed to provide vocational evidence which establishes that claimant has the residual functional capacity for substantial gainful activity and that, given claimant's age, limited education and work experience, there are significant numbers of jobs in the national economy which the claimant could perform despite claimant's limitations. Accordingly, this Administrative Law Judge concludes claimant is disabled for purposes of the MA program.

A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in

PEM Item 261. Under these circumstances, claimant is disabled according to MA and SDA program rules. The department's SHRT decision simply is unworkable, and thus, it cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in determining claimant is not disabled.

Accordingly, the department's decision is REVERSED, and it is Ordered that:

- (1) The department shall process claimant's April 1, 2008 MA/SDA application and shall award him all the benefits to which he may be entitled, as long as he meets the remaining financial and non-financial eligibility factors.
- (2) The department shall review claimant's physical condition for improvement in February 2012, unless Social Security disability benefits have been approved by that time.
- (3) The department shall obtain updated medical evidence from claimant's treating physicians and schedule him for another independent medical examination at the time of review.

/s/

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

Date Signed: February 8, 2010

Date Mailed: February 9, 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 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:

