

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: 2008-31432

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 4, 2009

Ottawa 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 upon claimant's request for a hearing. After due notice, a telephone hearing was held on February 4, 2009.

ISSUE

Whether claimant established disability for Medical Assistance (MA) and State Disability Assistance (SDA).

FINDINGS OF FACT

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

(1) On August 5, 2008, claimant applied for retroactive MA, MA and SDA. Claimant submitted medical records for department consideration.

(2) September 8, 2008, the Medical Review Team (MRT) denied claimant's application. Department Exhibit A.

(3) September 10, 2008, the department sent claimant written notice that his application was denied.

(4) September 16, 2008, the department received claimant's timely request for hearing.

(5) October 1, 2008, the State Hearing Review Team (SHRT) denied claimant's application. Department Exhibit B.

(6) February 4, 2009, the telephone hearing was held. Prior to the close of the record, claimant submitted additional medical records. Claimant waived the right to a timely hearing decision. March 25, 2009, after review of all medical evidence the SHRT again denied claimant's application. SHRT Decision, 3/25/09.

(7) Claimant asserts disability based on impairments caused by a bad back, heart disease, breathing problems, leg and neck problems, liver disease, anxiety, depression, and poor vision.

(8) Claimant testified at hearing through an interpreter. Claimant is not fluent in English. Claimant is 42 years old, 5'10" tall, and weighs 180 pounds. He completed high school and college in his native country in Cuba. He is unable to read and write in English. Claimant is able to perform basic math. Claimant does not have a driver's license and does not feel able to drive. Claimant is able to care for his needs at home.

(9) Claimant's past relevant employment has been as a mechanic, food packer, and maintenance work.

(10) November 14, 2008, claimant was examined by a neurosurgeon. A letter was prepared as record of the examination. Physical examination revealed claimant to be awake, alert, and oriented x 3. Pupils are mid and reactive. Extraocular movements are full, though there

is coarse breakdown of visual saccadic pursuits with increased end point nystagmus. This, along with positive Romberg's, mostly in delayed phases is suggestive of vestibular dysfunction and can explain patient's dizziness on rapid postural changes. Plantars are downgoing. There is no clonus. Basil ganglia functions are nearly adequate, except for occasional drop in the amplitude of rapid alternating movements. Cerebellar functions are within normal limits as well, except for a slight degree of dysrhythmia, dysmetria, visual overshooting, and truncal ataxia. Claimant demonstrates bilateral hemisensory inattention which may reflect subcortical microvascular, lacunar, or similar changes and could be related to longstanding history of nicotine abuse. This could be a physiologic finding for him. Nevertheless, I would leave further workup to his neurologist. The vestibular, cerebellar, and basil ganglia findings could be secondary to any of his medications. Examination of the lumbar spine reveals moderate paraspinal spasm with restricted mobility. Provocative tests for apophyseal arthritis or irritation are positive. Straight leg raise and foraminal compression tests are negative bilaterally. Claimant demonstrates mild L5-S1 radicular deficits in both extremities. Deep tendon reflexes are nearly symmetrical. There appears to be either increased sympathetic tone or a poverty of microcirculation distally in both lower extremities with decreased temperature. Pedal pulses are adequately palpable. Deep tendon reflexes are nearly symmetrical. Claimant has extensive hyperhidrosis throughout. Patient indicates he is perspiring because of the pain. Examination of cervical spine reveals moderate paraspinal spasm. Provocative tests for apophyseal arthritis or irritation are positive. Patient demonstrates mild C6 radicular deficits on either side, contribution from pain cannot be excluded. Similarly, mild deficits along the median and remotely the ulnar nerves cannot be readily excluded. Claimant categorically denies any radicular symptoms in the upper extremities. There is marked dysesthesias bilaterally in the distribution of C2-3, more so on the right. Deep

tendon reflexes are symmetrical though there is occasional reversal of the brachioradialis reflexes. This is some concern, especially in the presence of equivocal or early Romberg's, as it remotely suggests the presence of cervical myelopathy. Final impression is indicated as lumbar spondylosis with apophyseal arthralgia, early radiculopathy, neurogenic claudication, and discogenic pain; cervical spondylosis; occipital neuralgia; and sympathetic dysfunction.

Claimant Exhibit A. April 25, 2008, claimant underwent x-ray of the pelvis and a report was prepared that states no definite fracture, dislocation, or destructive bony lesion is identified.

Multiple phleboliths are noted within the pelvis. Sacroiliac joints appear unremarkable. No significant arthritis of the hips is noted. Claimant Exhibit A. December 1, 2008, claimant

underwent an MRI of the cervical spine and a report was prepared that states degenerative disc changes with associated bulges at both C5-6 where extends to the left and at C6-7; there is mild bilateral neuroforaminal stenosis secondary to the degenerative changes. No disc herniation, no significant neural element impingement is otherwise identified. Claimant Exhibit A. On or about

December 11, 2008, claimant underwent cardiac testing. A letter was written that indicates that claimant has normal S1 and S2; no S3 or S4 gallops; no significant murmurs; PMI is not palpable; no cyanosis, clubbing, or edema. Stress echocardiogram was essentially negative for ischemic heart disease. No significant atherosclerotic disease is suspected. Thyroid testing revealed hypothyroidism. Claimant Exhibit A.

(11) August 5, 2002, claimant underwent x-rays of the left knee. A report was prepared that states no bone or joint abnormality. Department Exhibit A, pg 2.

(12) February 24, 2007, claimant presented to emergency room complaining of acute back pain after lifting a transmission from a vehicle. Claimant was evaluated and a provisional diagnosis of acute low back strain is listed. Claimant was released with pain medication.

Department Exhibit A, pgs 10-11. February 27, 2007, claimant underwent x-rays of the lumbar spine. The prepared report indicates multiple rounds of calcification are seen in the pelvis, thought to represent phleboliths; there is straining of the lumbar spine with reversal of normal lordosis; no acute compression deformity is seen, no significant disc narrowing to suggest the presence of degenerative disc changes. Department Exhibit A, pg 15.

(13) April 26, 2008, claimant underwent a consultative physical examination and a report was prepared. Physical examination revealed claimant is awake, alert, oriented x 3. He is in no apparent distress. He has 2+ dorsalis pedis pulses equal bilateral extremities. Examination of patient's gait reveals he walks with an antalgic gait, favoring the right side. He is not fully extending the right leg either at the hip or the knee. He is able to come to a toe rise on the left leg, but has considerable difficulty on the right which he relates as secondary to pain. He is able to come to a heel rise on the left, but not able to walk this way. Examination of the spine reveals no deformity or erythema or evidence of trauma. Skin is intact. There is tenderness to palpation extending from approximately L3 to S 2 vertebral level. There is no tenderness to palpation on left side, but there is tenderness to palpation with a current spasm of the paraspinal muscles on the right. Tenderness to palpation in the buttock extending down the posterior, then lateral aspect of the distal leg and into the lower leg. There is no pain with flexion and extension of the hip with the knee flexed; however, straight leg raise is positive on the right side and contralateral straight leg raise is positive as well with pain radiating to the right side. Claimant is 5/5 motor, though he does take some coaching secondary to pain. The L2 through L5 nerve root distribution is equal bilaterally as well as the S1-S2 nerve root distribution equal bilaterally. Sensation is intact, though slightly decreased in the L4-S1 nerve distribution which is slightly subjective. Claimant has 5/5 motor C5 through C8 and including T1 bilaterally. Sensation is intact above the

L4 nerve root distribution all the way to C4. Negative Hoffman's, no Babinski, no clonus. There is 2+ patellar and Achilles reflexes equal bilaterally. Abdominal reflexes are symmetric. X-ray reveals preserve disc height at all levels with the exception of some decreased joint space between L5 and S1. There appears to be a slight retrolisthesis of L5 on S1 of approximately 2 mm. This is measured from the posterior aspect of the vertebral bodies. Obliques fail to reveal any type of pars defect. There is questionable spondylitis of the L5 vertebral pedicle/facet, though this may represent artifact on film. Sacroiliac joint space is maintained without evidence of fracture or acute change. Pelvis reveals no evidence of fracture or arthritis of the right hip. However, note is made on the left of some incongruity of the acetabular joint surface without frank evidence of fracture. Department Exhibit A, pgs 41-44. April 25, 2008 MRI of the lumbar spine was performed and the prepared report indicates significant derangement is present in the L4-5 disc annulus laterally to the left including a large zone of disc bulging and high intensity abnormality compatible with annular degeneration; and a focal herniation superiorly into the foramen under the left L4 nerve root. Department Exhibit A, pgs 47-48.

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 has end point stigmata suggestive of vestibular dysfunction and has dizziness on rapid postural changes. MRI revealed claimant has derangement at L4-5. Physical examination of the lumbar spine revealed moderate paraspinal spasm with restricted mobility. Provocative tests for apophyseal arthritis or irritation were positive. Straight leg raising and foraminal compression tests negative bilaterally. Claimant demonstrates mild L5-S1 radicular deficits in both lower extremities. Deep tendon reflexes are nearly symmetrical. Patellar pulses are adequately palpable. Deep tendon reflexes are nearly symmetrical. Examination of the cervical spine reveals moderate paraspinal spasm. Provocative tests for apophyseal arthritis or irritation are positive. Claimant demonstrates mild C6 radicular deficits on either side. Mild deficits along the median and ulnar nerves cannot be readily excluded. Finding of Fact 10-13.

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 employment at any job for 12 months or more. Therefore, 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 as mechanic, food packer, and janitor. See discussion at Step 2 above. Finding of Fact 9-13.

At Step 4, the objective medical evidence of record is not sufficient to establish that claimant has functional impairments that prevent claimant, for a period of 12 months or more, from engaging in a full range of duties required by his past relevant employment as a mechanic, food packer, and janitor. Therefore, claimant is disqualified from receiving disability at Step 4.

Although claimant is disqualified at Step 4, the Administrative Law Judge will proceed through the Step 5 sequential evaluation process, *arguendo*, to determine whether claimant has the residual functional capacity to perform some other less strenuous work than required by claimant's past relevant employment.

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, the objective medical evidence of record indicates that claimant retains the residual functional capacity to perform his past relevant work. See discussion at Step 2 above.

Finding of Fact 10-13.

At Step 5, the objective medical evidence of record is sufficient to establish that claimant is capable of doing at least unskilled light work. Considering claimant's Vocational Profile (younger individual, unable to communicate in English, unskilled work history) and relying on Vocational Rule 202.16, claimant is not disabled. Therefore, claimant is disqualified from receiving disability at Step 5.

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

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).

2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

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 exempt 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) 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 SSI 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.
- (c) A resident of an adult foster care facility, a home for the aged, a county infirmary, or a substance abuse treatment center.
- (d) A person receiving 30-day post-residential substance abuse treatment.
- (e) A person diagnosed as having Acquired Immunodeficiency syndrome (AIDs).
- (f) A person receiving special education services through the local intermediate school district.
- (g) A caretaker of a disabled person as defined in subdivision (a), (b), (e), or (f) above.

- (2) Applicants for and recipients of the State Disability Assistance program shall be considered needy if they:
 - (a) Meet the same asset test as is applied to applicants for the Family Independence Program.
 - (b) Have a monthly budgetable income that is less than the payment standard.
- (3) Except for a person described in subsection (1)(c) or (d), a person is not disabled for purposes of this section if his or her drug addiction or alcoholism is a contributing factor material to the determination of disability. 'Material to the determination of disability' means that, if the person stopped using drugs or alcohol, his or her remaining physical or mental limitations would not be disabling. If his or her remaining physical or mental limitations would be disabling, then the drug addiction or alcoholism is not material to the determination of disability and the person may receive State Disability Assistance. Such a person must actively participate in a substance abuse treatment program, and the assistance must be paid to a third party or through vendor payments. For purposes of this section, substance abuse treatment includes receipt of inpatient or outpatient services or participation in Alcoholics Anonymous or a similar program. 1995 PA 156, Sec. 605.
- (4) A refugee or asylee who loses his or her eligibility for the federal Supplemental Security Income program by virtue of exceeding the maximum time limit for eligibility as delineated in Section 402 of Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 U.S.C. 1612, and who otherwise meets the eligibility criteria under this section shall be eligible to receive benefits under the State Disability Assistance program.

After careful examination of the record and for reasons discussed at Steps 2-5, above, the Administrative Law Judge decides that claimant does not have severe impairments that prevent work for 90 days or more. Therefore, claimant does not qualify for SDA 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 and State Disability Assistance.

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

/s/

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

Date Signed: August 24, 2009

Date Mailed: August 25, 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.

JAB/db

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