

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: 2008-31558
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 11, 2009
Midland County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

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 March 11, 2009. Claimant personally appeared and testified. During the hearing, claimant got angry because he had to answer questions verbally and decided that he did not want to continue the hearing and stated that he was out of here. Claimant had requested to submit additional medical information which this Administrative Law Judge did grant his request, however, when he abandoned the hearing, he also took his additional medical information with him and refused to continue with the hearing. Therefore, this Administrative Law Judge will make a decision based upon the medical reports which are contained in the file.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P)?

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 July 17, 2008, claimant filed an application for Medical Assistance benefits alleging disability.

(2) On August 7, 2008, the Medical Review Team denied claimant's application stating that claimant refused corrective treatment.

(3) On August 11, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On September 5, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On October 7, 2008, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the claimant's liver condition has improved. He had been approved benefits based upon liver cirrhosis with ascites requiring paracentesis. The claimant had stopped drinking and no longer requires paracentesis. Subsequently he fell and fractured his wrist. While the wrist heals, he should be capable of performing the equivalent of one-armed light work with the expectation that healing will occur and pose no further limitations. Medical opinion was considered in light of CFR 416.927. The evidence in the file does not demonstrate any other impairment that would pose significant limitation. The medical evidence of record indicates that the claimant's condition is expected to improve within 12 months from the date of onset or from the date of surgery. Therefore, MA-P is denied due to lack of duration under 20 CFR 416.909. Retroactive MA-P was considered in this

case and is also denied. SDA is denied per PEM 261 as the impairment would not preclude all work for 90 days.

(6) Claimant is a 48-year-old man whose birth date is [REDACTED]. Claimant is 5' 4" tall and weighs 155 pounds. He recently gained 10 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills. Claimant also studied small engine repair in high school. Claimant is not currently employed and refused to answer any further questions.

(7) Claimant alleges as disabling impairments: hypertension, cardio obstructive pulmonary disease, cirrhosis, and a broken arm.

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).

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).

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).

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. Claimant refused to answer questions about when he last worked. Claimant is disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that a treatment note of [REDACTED] reported the claimant to have fractured his left wrist in a motorcycle fall. He reported a history of severe alcoholism, but reported having been clean for about one year. He reported he was being weaned off of the medications he was placed on at that time. He reported not needing paracentesis in about a year. Other than the fracture, his physical examination was within normal limits. Medical Examination Report from the hand surgeon expected his condition to be healed in eight weeks. A DHS-49 dated [REDACTED] indicates that claimant's condition was improving and that he had a temporary disability and he was expected to return to work [REDACTED]. Claimant could not do any lifting because he had no use of his left arm at that time, but he could use his right arm for repetitive actions such as simple grasping, reaching, pushing and pulling and fine manipulating and he could operate foot and leg controls with both feet and legs. Claimant had sustained a left distal radius fracture [REDACTED]. Claimant underwent left wrist surgery, closed reduction and external fixation on [REDACTED]. A [REDACTED] DHS-49 indicates that claimant's condition at that time was deteriorating due to an enlarged liver and cirrhosis but that he could occasionally lift 10 pounds or less, stand or walk less than two hours in an eight hour day but sit less than six hours in an eight hour work day. Claimant could do simple grasping, reaching, pushing and pulling with both hands but could not do fine manipulating. Claimant could operate foot and leg controls with his right leg. On [REDACTED] claimant had a motorcycle accident and he had a complex fracture of the distal radius with interarticular extension.

At Step 2, claimant has the burden of proof of establishing that he has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. There is insufficient objective clinical medical evidence in the record that

claimant suffers a severely restrictive physical or mental impairment Claimant refused to testify about any of his pain or his conditions. Therefore, claimant did abandon the hearing. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury, that is consistent with a deteriorating condition. In short, claimant's condition is basically within normal limits except for his injury to his left wrist which was expected to improve after approximately eight weeks. There is no evidence indicating that claimant's wrist has not healed as was expected in the Medical Examination Reports. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment which has lasted the durational requirement of 12 months or more.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers mental limitations resulting from his state. There is no mental residual functional capacity assessment in the record. The evidentiary record is insufficient to find claimant suffers a severely restrictive mental impairment. For these reasons, this Administrative Law Judge finds that claimant has failed to meet his burden of proof at Step 2. Claimant has abandoned the hearing and must be denied benefits at this step.

Claimant must be denied benefits at Step 3 as the medical evidence of claimant's condition does not give rise to a finding that he would meet a statutory listing in the code of federal regulations.

Claimant must be denied at Step 4 based upon the fact that claimant refused to testify as to his past work and whether or not he could complete his past work.

Claimant is disqualified from receiving disability at Step 5, because he abandoned the hearing and refused to testify as to whether or not he had any residual functional capacity.

Claimant's information contained in the file indicates that claimant has a history or alcohol abuse. Applicable hearing is the Drug Abuse and Alcohol (DA&A) Legislation, Public Law 104-121, Section 105(b)(1), 110 STAT. 853, 42 USC 423(d)(2)(C), 1382(c)(a)(3)(J) which indicates that an individual should not be considered to be disabled for purposes of this title if alcoholism or drug addiction would but for this sub-paragraph be a contributing factor material to the determination that the individual is disabled. This Administrative Law Judge finds that claimant basically had a normal physical examination in the file except for his injured wrist and that his substance abuse was material to his condition and any alleged impairments and alleged disability.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance benefits. Claimant is disqualified from receiving benefits at Step 1, Step 2, Step 3, Step 4, and Step 5 because claimant refused to provide information about his current condition.

Accordingly, the department's decision is AFFIRMED. Claimant did abandon the hearing.

/s/ _____
Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 7, 2009

Date Mailed: April 7, 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 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.

LYL/vmc

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