

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: 2008-6846

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 28, 2008

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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 28, 2008.

ISSUE

Did the Department of Human Services (DHS) properly deny claimant's Medical Assistance (MA-P) and State Disability Assistance (SDA) application?

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 8/13/07, claimant applied for MA-P and SDA with the Michigan DHS.
- (2) Claimant did not apply for retro MA.

- (3) On 9/27/07, the MRT denied.
- (4) On 10/1/07, the DHS issued notice.
- (5) On 10/17/07, claimant filed a hearing request.
- (6) Claimant has an SSI application pending with the Social Security Administration (SSA).
- (7) On 1/30/08, the State Hearing Review Team (SHRT) denied claimant.
- (8) On February 28, 2008, an administrative hearing was held. At the administrative hearing claimant indicated that he had a representative. No appearance was contained in claimant's file. Claimant was given an opportunity to have the hearing adjourned so that he may have his representative appear with him at the administrative hearing. Claimant declined.
- (9) Claimant's representative filed an appearance dated after the administrative hearing--3/1/2008. Claimant was being represented by [REDACTED]
- (10) Claimant declined to have the record held open for the submission of any new or additional documentation.
- (11) As of the date of application, claimant was a 50-year-old male. Exhibit 6 indicates claimant is 5' 10" and weighs 120 pounds. Testimony at the administrative hearing was that claimant is 5' 6" and weighs 115 pounds.
- (12) Claimant does not have an alcohol/drug abuse problem or history. Claimant smokes approximately a ½ pack of cigarettes per day. Claimant has a nicotine addiction.
- (13) Claimant testified he does not have a driver's license due to having it revoked for excessive tickets. Claimant further testified that he had a DUI in 1992.
- (14) Claimant is not currently working. Claimant last worked in 2005 installing carpets. Claimant's work history includes a self-owned carpet business where claimant was an independent contractor. Claimant's work history is as a laborer.

(15) Claimant alleges disability on the basis of severe left leg pain, depression, sleepiness and confusion, and a spider bite.

(16) The SHRT findings and conclusions of its decision are adopted and incorporated by reference to the following extent:

... has a high school education and history of work as a laborer. DHS-49 dated 5/07 indicates claimant was thin and had decreased breath sounds. Exam within normal limits except he was depressed. Exhibit 13. Doctor indicated he could occasionally lift less than 10 pounds and stand/walk less than 2 hours. Exhibit 16.

8/8/07 exam reports claimant had a brown spider bite infection that made him very, very sick and left him with left lower extremity pain. Exhibit 5. Claimant was 5' 10" and 120 pounds. Alert and oriented x3 with good memory function. ... obviously in pain and quite concerned about left lower extremity. Walked without an assistive device but did have a limp on the left. Gait was stable. Pinch and grip strength were within normal limits. Exhibit 6. Exam of lower extremities revealed 1/2" girth loss on the left side, mid thigh, as well as left lower leg compared to right. No sensory loss and reflexes were within normal limits bilaterally. Doctor felt the claimant most likely suffers from peripheral neuropathy with no evidence of motor deficits or sensory deficits clinically. Exhibit 7. Also has bilateral rotator cuff injuries and lower back pain. Exhibit 8.

Analysis: Claimant has pain in left leg with some atrophy but no evidence of sensory or motor deficits. Able to ambulate without assistance. Loss of range of motion but no loss of grip strength or dexterity. Claimant reported confusion from his medication but there was no evidence of confusion noted on the exam. Treating physician has given less than sedentary work restrictions based on the claimant's physical impairments. However, this medical source opinion (MSO) is inconsistent with the great weight of the objective medical evidence per CFR 416.927(c)(2)(3)(4) and 20 CFR 416.927d(3)(4)(5), will not be given controlling weight. Collective medical objective evidence shows claimant capable of performing medium work.

(17) Claimant testified that he does laundry, and attempts to help out with yard work and snow removal.

(18) The undersigned Administrative Law Judge was on a scheduled leave of absence from 8/1/08, returning full time on 2/1/09.

(19) A review of the file indicates that the representative has not contacted SOAHR or the undersigned Administrative Law Judge requesting any kind of an extension or any opportunity to submit any additional medical reports.

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).

Statutory authority for the SDA program states in part:

- (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.

In order to receive MA benefits based upon disability or blindness, claimant must be disabled or blind as defined in Title XVI of the Social Security Act (20 CFR 416.901). DHS, being authorized to make such disability determinations, utilizes the SSI definition of disability when making medical decisions on MA applications. MA-P (disability), also is known as

Medicaid, which is a program designated to help public assistance claimants pay their medical expenses. Michigan administers the federal Medicaid program. In assessing eligibility, Michigan utilizes the federal regulations.

Relevant federal guidelines provide in pertinent part:

"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.

The federal regulations require that several considerations be analyzed in sequential order:

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

The regulations require that if disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b). If no, the analysis continues to Step 2.
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 416.909(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 that meets the duration requirement? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.920(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. Sections 200.00-204.00(f)?
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? This step considers the residual functional capacity, age, education, and past work experience to see if the client can do other work. If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(g).

At application claimant has the burden of proof pursuant to:

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

Federal regulations are very specific regarding the type of medical evidence required by claimant to establish statutory disability. The regulations essentially require laboratory or clinical medical reports that corroborate claimant's claims or claimant's physicians' statements regarding disability. These regulations state in part:

...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 sure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

As already noted in the findings of fact, claimant's representative filed his appearance after the administrative hearing. The appearance was also signed after the administrative hearing--

3/1/2008. Claimant's representative also filed an extensive letter of complaint regarding the administrative hearing, including the conduct of the ALJ as well as complaints against SOAHR for failing to attend to issues of due process. As already noted, claimant's representative was not in appearance at the administrative hearing. The department manager from Administrative Hearings with SOAHR responded to the representative indicating that a complete review of the hearing tape was conducted by SOAHR. The SOAHR indicated that there was no indication from a review of the tape that claimant was:

Pressured or that he exhibited any reluctance to proceed. During the hearing, [claimant] declined the ALJ's offer to keep the record open for the submission of additional medical reports. Now that [REDACTED] is representing [claimant], you may request that the record be kept open to allow the submission of such documents. The ALJ however has the discretion to grant or deny such a request.

Claimant's representative has not contacted SOAHR or the undersigned Administrative Law Judge to request that the record be kept open or request to submit any additional medical documentation.

Applying the sequential analysis herein, claimant is not ineligible at the first step as claimant is not currently working. 20 CFR 416.920(b). The analysis continues.

The second step of the analysis looks at a two-fold assessment of duration and severity. 20 CFR 416.920(c). This second step is a *de minimus* standard. Ruling any ambiguities in claimant's favor, this Administrative Law Judge (ALJ) finds that claimant meets both. The analysis continues.

The third step of the analysis looks at whether an individual meets or equals one of the Listings of Impairments. 20 CFR 416.920(d). If claimant were in fact 5' 10" and 120 pounds pursuant to the statement on Exhibit 6, claimant does not meet or equal the underweight listings

found in Listing 5.00 for low body weight. Thus, claimant does not meet or equal one of the listings. The analysis continues.

The fourth step of the analysis looks at the ability of the applicant to return to past relevant work. This step examines the physical and mental demands of the work done by claimant in the past. 20 CFR 416.920(f).

In this case, this ALJ finds that claimant cannot return to past relevant work on the basis of the medical evidence. The analysis continues.

The fifth and final step of the analysis applies the biographical data of the applicant to the Medical Vocational Grids to determine the residual functional capacity of the applicant to do other work. 20 CFR 416.920(g). After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that claimant does not meet statutory disability on the basis of Medical-Vocational Grid Rule 203.21 as a guide.

In reaching this conclusion, it is noted that this Administrative Law Judge basically concurs with the MRT and SHRT decisions. The medical evidence taken as a whole does not document statutory disability. As already noted, there is no indication that claimant meets or equals a listing with regards to weight whether he is at 5' 6" or 5' 10". The evaluation conducted on [REDACTED] concludes while claimant most likely suffers from peripheral neuropathy, there is no evidence of motor deficits or sensory deficits clinically. See Exhibits 7 and 8. In addition, claimant testified at the administrative hearing that he is able to engage in a full range of activities of daily living. The DHS-49 completed on 5/29/07 does not meet the statutory requirements found at 20 CFR 416.913(b), .913(d), and .913(e). This Administrative Law Judge further concurs with the analysis that the great weight of the medical evidence does not support finding that claimant is capable of less than sedentary work pursuant to the requirements found at 20 CFR 416.927c(2)(3)(4) and .927d(3)(4)(5).

It is noted that claimant's representative, who was not in appearance at the administrative hearing and had not filed an appearance as of the administrative hearing, has not indicated any request to keep the record open or to add additional medical documentation as offered in the March 7, 2008 letter [REDACTED]

It should be further noted and emphasized that should claimant receive a favorable Social Security decision, then the State of Michigan would open an MA case on behalf of claimant pursuant to any favorable decision.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department's actions were correct.

Accordingly, the department's determination in this matter is UPHELD.

/s/ _____
Janice Spodarek
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 26, 2009

Date Mailed: June 29, 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 mailing date of the rehearing decision.

JS/cv

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cc:

