

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: 2008-12141
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 21, 2008
Presque Isle 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, a telephone hearing was held on May 21, 2008. Claimant personally appeared and testified.

ISSUE

Did the department properly determine claimant is not disabled by Medicaid (MA) 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 51-year-old three time divorced tobacco abuser (10 packs per week) who lives alone in [REDACTED].

(2) Claimant has a high school diploma, and also, some electrician's training (1 month trade school).

(3) Claimant's past relevant work history is in self-employed heavy construction/roofing but he has not done that or any other type of work since July, 2007 (Client Exhibit A, pg 3).

(4) On August 24, 2007, claimant applied for MA based on progressively worsening orthopedic impairments and chronic lung disease secondary to his 40+ year smoking habit.

(5) Claimant stands approximately 6'1" tall and reported his weight at hearing as 151 pounds; he is right hand dominant.

(6) In December, 2005, claimant underwent left ankle open reduction and internal fixation (ORIF) to repair displaced malleolar posterior and lateral fractures (Department Exhibit #1, pgs 79 and 82).

(7) Final x-rays taken nine weeks later looked superb and the doctor advised claimant not to worry about much other than trying to avoid re-injury (Department Exhibit #1, pg 72).

(8) Claimant's remote surgical history is positive for a 2002 right collar bone fracture (7 years ago)(Department Exhibit #1, pgs 63 and 66).

(9) In August, 2007, claimant exhibited positive straight leg raises bilaterally and tenderness over his left sciatic notch area; consequently, a lumbar spine MRI scan was scheduled (Department Exhibit #1, pg 56).

(10) This October 25, 2007 lumbar spine MRI scan revealed claimant had a posterior disc herniation at L4-5 with left foraminal compromise, as well as diffuse facet hypertrophy and bilateral degenerative narrowing in the neural foramina at L5-S1 (Department Exhibit #1, pg 13).

(11) Claimant had chronic, debilitating low back pain beginning at least in August, 2007, secondary to his subsequently diagnosed disc herniation and generally progressive spine degeneration (See Finding of Fact #9 and #10 above).

(12) None of the analgesics being prescribed relieved claimant's pain.

(13) On March 26, 2008, claimant underwent a lumbar laminectomy to repair the L4-5 disc herniation.

(14) Two months later (5/21/08) claimant appeared at hearing to dispute the department's denial of his 2007 disability application (See Finding of Fact #4 above).

(15) Claimant reported his chronic lumbar pain continues, he is easily fatigued and he suffers from shortness of breath upon minimal exertion.

(16) Even before claimant's laminectomy, specifically, on October 2, 2007, his treating doctor said he was incapable of lifting over ten pounds and he should avoid any repetitive bending/twisting (Department Exhibit #1, pg 11).

(17) After the laminectomy on March 26, 2008, claimant's orthopedic surgeon opined it would take between six and twelve months before he could return to work because the nerve root that was pinched needed time to "settle down" (Department Exhibit #3, pgs 11, 14 and 37).

(18) Claimant's other diagnosed conditions include post-traumatic arthritis, osteoarthritis, COPD and sleep apnea (Department Exhibit #1, pgs 19, 21 and 24).

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

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.

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).

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).

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).

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).

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).

Claimant is not disqualified from receiving MA at Step 1, because he has not been gainfully employed since July, 2007, due to progressively worsening lower lumbar pain.

At Step 2, claimant's physical impairments finally diagnosed in October, 2007 caused intractable pain until the herniation was repaired. Even then, a reasonable recovery period is necessary, per claimant's orthopedic surgeon's opinion. As such, an analysis of Step 3 is required.

At Step 3, the Listings must be considered. The Listings are a group of over 100 specific medical conditions which are deemed to be automatically disabling because they prevent an individual from engaging in Substantial Gainful Activity (SGA) for the requisite duration. The medical evidence on this record confirms claimant met Listing 1.04(A) at all times relevant to his

disputed application, filed August 24, 2007. As such, the department's denial of that application was erroneous and it simply 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 denying claimant's disputed application because he met Listing 1.04(A).

Accordingly, the department's action is REVERSED, and this case is returned to the local office for application reinstatement and reprocessing, with claimant's mandatory improvement review to be conducted in July, 2009.

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

Date Signed: June 1, 2009

Date Mailed: June 1, 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.

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cc:

