

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: 2008-15987
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 18, 2008
Genesee 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 June 18, 2008. Claimant personally appeared and testified. He was assisted by

[REDACTED].

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) On March 20, 2007, claimant's authorized representative [REDACTED] filed an MA/retro-MA/SDA application because claimant was recently hospitalized (2/16/07-2/26/07) for treatment and repair of a perforated descending colon secondary to acute diverticulitis.

(2) On February 20, 2007, claimant underwent excision of the perforated colon section and creation of an ostomy (Department Exhibit #1, pgs 79-81).

(3) A review of all claimant's other 14 systems at intake was negative, except for the above-referenced necessary emergency treatment/surgery (Department Exhibit #1, pg 25).

(4) The hospital records indicate claimant's post-operative course was unremarkable; he was discharged home in stable condition, fully ambulatory with limitations on heavy lifting, no tub baths and no driving through a reasonable recovery period (Department Exhibit #1, pg 67).

(5) If claimant's March 20, 2007 MA/retro-MA/SDA application had been approved, the expenses associated with his hospitalization and treatment would have been covered by MA.

(6) When the department denied this application, claimant's authorized representative filed a hearing request to protest the denial.

(7) Claimant's medical history is positive for a remote hernia repair in 2000; no complications are noted (Department Exhibit #1, pg 25).

(8) A month after claimant was discharged from the hospital his treating practitioner indicated he had developed an umbilical hernia (Client Exhibit A, pg 3).

(9) Claimant is a single, 42-year-old smoker with a general equivalency diploma (GED) who was cited for an alcohol-related driving offense approximately eight years ago, per his hearing testimony.

(10) As of claimant's hearing date (6/18/08) he did not have a valid driver's license and he was living with his mother in [REDACTED]; he has two minor sons but was not married to either of their mothers.

(11) Claimant has 1 ½ years of post-secondary education in the occupational therapy curriculum at [REDACTED] (Department Exhibit #1, pg 12).

(12) Claimant has not been employed since 2005 when he spent a couple of months as a general factory laborer through a temporary services agency; before that, claimant said he attempted to start a tree service business which ended when he got injured.

(13) Claimant is not involved in any mental health treatment or counseling, he has no history of psychiatric treatment or hospitalizations and he is not taking any psychotropic medications.

(14) Claimant's treating practitioner indicates he has no mental limitations, and independent IQ testing done in February, 2008 indicates claimant's Verbal IQ is 80, his Performance IQ is 77 and his Full Scale IQ is 77 (Client Exhibit A, pg 2; Client Exhibit B, pgs 1 and 13).

(15) An independent physical examination was conducted on October 11, 2007 in connection with claimant's quest to obtain medical coverage (MA)(Department Exhibit #1, pgs 8 and 9).

(16) Claimant's chief complaint was that he needed insurance to have his colostomy reversed (Department Exhibit #1, pg 8).

(17) Claimant also reported at that time he injured his lower extremities in the year 2000 requiring pins and screws in the left ankle and a rod in the right ankle which he believes needs to be removed (Department Exhibit #1, pg 8).

(18) Claimant's treating practitioner verified decreased right ankle range-of-motion due to surgical implantation of the support bar in 2000 (Client Exhibit A, pg 1).

(19) As of April 8, 2008, claimant's treating practitioner was prescribing a [REDACTED] and [REDACTED] for pain management and [REDACTED] and a [REDACTED] for blood pressure control; no other medications are noted (Client Exhibit A, pg 2).

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).

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 SDA program differs from the federal MA regulations in that the durational requirement is 90 days. This means that the person's impairments must meet the SSI disability standards for 90 days in order for that person to be eligible for SDA benefits.

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).

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).

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).

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).

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).

Claimant is not disqualified from receiving MA/retro-MA/SDA at Step 1, because he has not been gainfully employed since 2005 (See Finding of Fact #12 above).

At Step 2, the confirmed residuals stemming from claimant's 2000 lower extremity surgeries have left him with some range of motion limitations and pain. However, it must be noted no severe mental impairments have been shown, and claimant's post-surgical lower extremity arthritis appears capable of adequate pain management with his current medication schedule. Likewise, claimant's blood pressure is adequately controlled and nothing in claimant's hospital records or the follow-up colostomy notes indicate anything but a full recovery within the 12 month period required before MA approval can be granted.

Furthermore, it must be noted the law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant's symptoms can be managed to the point where substantial gainful employment can be achieved, a finding of not disabled must be rendered. Nevertheless, claimant's medically managed lower extremity impairments meet the *de minimus* level of severity and duration required for further analysis.

At Step 3, the medical evidence on this record does not support a finding that these impairments, standing alone or combined with claimant's other diagnosed conditions, are severe enough to meet or equal any specifically listed impairments; consequently, the analysis must continue.

At Step 4, the record supports claimant's contention he cannot return to factory work due to the prolonged standing required in that job, nor would he be capable of re-starting his tree service business for the same reason. As such, this analysis must continue.

At Step 5, an individual's age, education and previous work experience (vocational factors) must be assessed in light of the documented impairments. Claimant is a young individual with some post-secondary education and an unskilled work history. Consequently, at Step 5, this Administrative Law Judge finds, from the medical evidence of record, that claimant retains the residual functional capacity to perform at least sedentary work, as that term is defined above. Therefore, claimant is not disabled under the MA/SDA definitions because he can return to other sedentary work, as directed by Medical-Vocational Rule 201.27.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly determined claimant is not disabled by MA/SDA eligibility standards.

Accordingly, the department's denial of claimant's March 20, 2007 MA/retro-MA/SDA application is AFFIRMED.

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

Date Signed: July 29, 2009

Date Mailed: July 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 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.

2008-15987/mbm

MBM/db

cc:

