

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: 2008-17487

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

October 7, 2008

Washtenaw 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 October 7, 2008. Claimant and his long-term partner personally appeared and testified. Also, claimant 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) Claimant is a 53-year-old ([REDACTED]), divorced high school graduate who worked for over 20 years as a school janitor/maintenance man until he was fired for timecard

fraud (leaving the building unattended to pick up some Tylenol for reported knee pain) (Department Exhibit #1, pg 17).

(2) On March 7, 2008, claimant applied for disability-based assistance (MA/SDA).

(3) When that application was denied claimant requested a hearing, held seven months later on October 7, 2008.

(4) By that time, claimant had been working approximately three months in a temporary services position between 14 and 20 hours per week (and sometimes more), earning ■■■ per hour.

(5) Claimant's job entailed light factory work (lifting small parts weighing less than ten pounds), with a sit/stand option during his seven hour shifts.

(6) Claimant alleges he is unable to work in any full-time, substantial gainful capacity due to depression and knee pain.

(7) Claimant's medical records confirm a history of prostate cancer in full remission following successful radiation therapy in 2008 (Department Exhibit #1, pgs 13 and 14; Client Exhibit A, pg 5).

(8) A right knee MRI scan done two days before application filing confirms claimant has severe right knee tricompartmental osteoarthritis with marked joint space narrowing and osteophyte formation, as well as tears in his right medial and lateral menisci (Client Exhibit A, pg 4).

(9) Additionally, a February 23, 2008 independent physical examination confirms claimant's right knee condition is much worse than his left knee arthritis, necessitating a brace for comfort and a cane if prolonged distances or increased pain is present (Client Exhibit C, pg 1).

(10) Claimant walks with an antalgic gait and a right-sided limp; [REDACTED] have been prescribed for pain management (Client Exhibit C, pg 1).

(11) No other severe physical impairments were found during claimant's independent physical examination (Client Exhibit C, pgs 1-3).

(12) Claimant has a well-documented problem with ongoing alcohol abuse and depression (Department Exhibit #1, pg 7-12; Client Exhibit B, pgs 1-7).

(13) Claimant's treating doctor is prescribing [REDACTED] for symptom control, and also, as of claimant's October 7, 2008 hearing date he had a referral to outpatient counseling, per his hearing testimony.

(14) A February 11, 2008 independent psychological examination notes no severe mental, emotional or cognitive impairments, stating claimant's biggest problem is alcoholism in brief and very uncertain remission with Personality Disorder NOS and a history of Impulsive Disorder (drinking and domestic violence) with periodic anxiety attacks (Client Exhibit B, pgs 1-7).

(15) Claimant testified at hearing his chronic worry about losing his long-term janitorial position, his ongoing health issues and his inability to pay his bills (situational stressors) cause him to be unable to focus, to concentrate or to get restful sleep.

(16) Claimant stands approximately 5'9" tall, weighs about 180 pounds and is right hand dominant; he currently resides with his long-term partner in [REDACTED]

(17) Claimant does not have a valid driver's license because it was suspended secondary to an alcohol-related conviction.

(18) Clamant reported he was alcohol free as of his hearing date, but he admitted to heavy alcohol consumption before being hospitalized for an attempted suicide by self-stabbing in the past (Client Exhibit A, pgs 2 and 3).

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).

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).

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).

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial gainful activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

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).

At Step 1, the record reveals claimant was employed in a sedentary, unskilled factory job for approximately three months as of his October 2008 hearing date, as sedentary work is defined at 20 CFR 416.967(a). Nothing in claimant's medical records establishes he could not have taken such a job if it had been offered sooner, or verifies he has any combination of impairments which would prevent him from doing that type of work on a full-time basis. In fact, the independent psychological evaluation done in February 2008 notes claimant has no severe mental impairments, stating instead his biggest problem is alcoholism in very brief and uncertain remission.

The current federal regulations are clear. Drug addiction and/or alcoholism disqualifies an applicant from disability benefits if those conditions are a material, contributing factor to his or her inability to engage in substantial gainful activity. Put simply, federal law no longer permits a finding of disability for those persons whose primary impairment is substance abuse/dependency (PL 104-121).

“Material to the determination” means that, if the applicant stopped using drugs or alcohol, his or her remaining limitations would not be disabling. This Administrative Law Judge finds claimant’s long-term abstinence from alcohol consumption, in combination with adherence to prescribed medication schedule, would significantly decrease his reported symptoms to the point where he would be fully capable of maintaining simple, full-time unskilled work of the type he was doing part-time as of his hearing date. Consequently, claimant’s disputed MA/SDA application could be denied at the threshold level based on the materiality of ongoing alcohol abuse during the disputed period. However, even if further analysis was required, claimant would be unsuccessful in establishing a legally disabling condition.

Assuming claimant’s impairments could pass the *de minimus* hurdle established by Higgs v Bowen, 880 F2d, 862 (6th Cir, 1988) at Step 2, an analysis of the remaining steps cited above would be required.

At Step 3, the medical evidence on this record does not support a finding that claimant’s diagnosed impairments, standing alone or combined, are severe enough to meet or equal any specifically listed impairments; consequently, an assessment of step four would be required.

Step 4 of the analysis looks at the applicant’s ability to return to his or her past relevant work. This step examines the physical and mental demands of an applicant’s former jobs. 20 CFR 416.920(e). In this case, this Administrative Law Judge finds no medical basis to support a finding claimant could not perform full-time the sedentary factory work he was doing part-time as of the hearing date.

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. Claimant's current medication schedule appears perfectly capable of controlling his pain and stabilizing his mood to the point necessary to render him capable of full-time, unskilled sedentary factor work. As such, this analysis could end at Step 4, with a finding of not disabled. Again, even if an analysis of Step 5 (as done by the State Hearing Review Team) was required, claimant could not be found disabled.

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 53-year-old individual with a high school education and an unskilled janitorial work history. Consequently, at Step 5, this Administrative Law Judge finds, from the medical evidence of record, that claimant also retains the residual functional capacity to perform light work, as that term is defined above. This finding is consistent with the department's State Hearing Review Team (SHRT) decision dated October 10, 2008 which states in relevant part:

There was no evidence of recurrent or metastatic prostate cancer. He has some arthritis and uses a cane, but this was not disabling at the listing level. He has some depression with the primary problem of ongoing alcoholism. He can do unskilled light work.

As such, claimant's disputed MA/SDA application must remain denied.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly denied claimant's March 7, 2008 MA/SDA application because he does not meet the criteria necessary for approval.

Accordingly, the department's decision is AFFIRMED.

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

Date Signed: October 26, 2009

Date Mailed: October 27, 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.

MBM/db

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