

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: 2008-18181

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

October 1, 2008

Calhoun 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 1, 2008. Claimant personally appeared and testified.

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 56-year-old, twice divorced Marine (1968-1977) with a general equivalency diploma (GED) and several additional college credits; he resides with his long-term partner in [REDACTED] Department Exhibit #1, pgs 21 and 24; Client Exhibit A, pgs 2 and 3; Client Exhibit B, pg 14).

(2) Claimant stands approximately 6' tall, he weighs approximately 196 pounds and he is left hand dominant (Department Exhibit #1, pg 22).

(3) Claimant has a wide variety of past work experience in unskilled and semi-skilled positions including being an optical technician, a warehouse truck lift operator, a fundraiser/telemarketer and a self-employed handyman (Department Exhibit #1, pg 20).

(4) Claimant applied for disability-based benefits on March 17, 2008 because he has not been gainfully employed since 2005 when he left his most recent warehouse dock job (Department Exhibit #1, pg 20).

(5) Three days after claimant applied for disability-based benefits he underwent a general physical; he was described as a well-developed, well-nourished, well-hydrated individual in no acute distress (Department Exhibit #1, pg 15).

(6) Claimant reported ongoing neck and low back pain, currently being managed with [REDACTED] (Department Exhibit #1, pg 15).

(7) Claimant's lumbar spine MRI scan confirms degenerative disc disease (arthritis) with mild subluxation at L5-1 but no neural compression; this ailment is not uncommon for someone of claimant's age (Client Exhibit A, pg 2).

(8) Additionally, claimant was seen by a neurosurgeon who felt there was no need for surgery, opining instead that there was a significant "psychiatric overlay" to claimant's pain complaints (Client Exhibit A, pg 2).

(9) Claimant reports recurrent bouts of depression with panic attacks and a Bipolar Diagnosis since his mother died in June 2000.

(10) As of claimant's October 1, 2008 hearing date, he had been participating regularly in outpatient mental health treatment at [REDACTED] were being

prescribed for mood stabilization and at hearing, claimant acknowledged an improvement in his mood on these medications.

(11) Claimant also has been diagnosed with Chronic Obstructive Pulmonary Disease (COPD) brought on by an extensive marijuana abuse history and continued cigar smoking (3 to 4 weekly)(Client Exhibit B, pg 3).

(12) In December 2007/January 2008, claimant spent a few days in the hospital for a cardiac work-up secondary to reported chest pain (Client Exhibit B, pgs 1-9).

(13) Claimant's pain resolved after aminophylline was administered, but his perfusion spect study confirmed a decreased ejection fraction (44%) with borderline left ventricular enlargement and a previous inferior myocardial infarction but no evidence of ongoing cardiac ischemia (Client Exhibit B, pgs 8 and 9).

(14) An April 2008 hospital report notes claimant's chest x-ray at that time was negative, his chest CT scan showed no evidence of aortic dissection and his lungs were clear without rales or wheezes; he was discharged in stable condition on an albuterol inhaler (as needed) for shortness of breath and colace for constipation (a continued side effect of claimant's ongoing medications, per his testimony at hearing)(Client Exhibit B, pgs 10-20).

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:

Sec. 604 (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

- (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.

Michigan administers the federal MA program. In assessing eligibility for both MA and SDA, Michigan defers to the federal guidelines. These federal guidelines state in relevant 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.

...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.

...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).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...If you have an impairment(s) which meets the duration requirement and is listed in Appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering your age, education, and work experience. 20 CFR 416.920(d).

...If we cannot make a decision on your current work activities or medical facts alone and you have a severe impairment, we will then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can still do this kind of work, we will find that you are not disabled. 20 CFR 416.920(e).

If you cannot do any work you have done in the past because you have a severe impairment(s), we will consider your residual functional capacity and your age, education, and past work experience to see if you can do other work. If you cannot, we will find you disabled. 20 CFR 416.920(f)(1).

At application, the applicant has the burden of proof pursuant to the following section:

...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).

The federal regulations are very specific regarding the type of medical evidence required from applicants to establish disability status. The regulations essentially require laboratory or clinical medical reports consistent with an applicant's reported symptoms, or with his/her treating doctors' statements regarding disability or the lack thereof. 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 blood pressure, 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).

Applying the sequential analysis herein, claimant remains eligible at the first step since he is not currently working and he has not been employed since 2005 when he left his last warehouse dock job. 20 CFR 416.920(b). The analysis continues.

The second step of the analysis assesses the severity of all documented impairments. 20 CFR 416.920(c). This step is a *de minimus* standard. Ruling any ambiguities in claimant's favor, this Administrative Law Judge finds severity is met. The analysis continues.

The third step of the analysis looks at whether an individual meets or equals one of the listed impairments. 20 CFR 416.920(d). Claimant does not. The analysis continues.

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

In this case, this Administrative Law Judge finds nothing to support claimant's argument that he is physically or mentally incapable of returning to any of his past relevant jobs as long as he complies with his current medication schedule and continues counseling for mental stabilization as suggested. Consequently, this analysis could end at step four, with a finding that claimant could return to his past relevant work. However, even if an analysis of Step 5 was required, claimant would be unsuccessful in establishing a legally disabling condition.

The fifth and final step of the analysis applies the biographical data of each applicant to the Medical-Vocational Grid Rules to determine the functional capacity of the applicant to do any type of substantial gainful work activity. 20 CFR 416.920(f). After a careful review of the credible medical evidence submitted, this Administrative Law Judge finds that Medical-Vocational Grid Rule 202.5 also directs a finding of not disabled, in concurrence with the department's State Hearing Review Team (SHRT) decisions dated June 3, 2008 and October 7, 2008.

In reaching this conclusion, this Administrative Law Judge considered claimant's age, education, work history and documented mental health issues, osteoarthritis, COPD and cardiac history. She finds insufficient medical documentation to indicate these conditions, standing alone or combined, would interfere with claimant's ability to engage in any number of light, unskilled low stress jobs currently existing in the national economy which is the standard to be applied in

disability determination cases. Put simply, when taken as a whole, the medical evidence in this file fails to meet the regulatory requirements necessary to qualify for disability MA or SDA.

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 17, 2008 MA/SDA application, based upon a finding he does not meet the rules necessary to qualify for either program.

Accordingly, the department's action 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.

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cc:

