

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: 2008-19183
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 21, 2008
Roscommon County DHS

ADMINISTRATIVE LAW JUDGE: Jana B. Bachman

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 October 21, 2008.

ISSUE

Whether claimant had established disability for Medical Assistance (MA) and State Disability Assistance (SDA)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) January 24, 2008, claimant applied for MA and SDA.
- (2) March 18, 2008, the Medical Review Team (MRT) denied claimant's application.

(Department Exhibit A.)

(3) March 21, 2008, the department sent claimant written notice that the application was denied.

(4) April 21, 2008, the department received claimant's timely request for hearing.

(5) June 2, 2008, the State Hearing Review Team (SHRT) denied claimant's application. (Department Exhibit B.)

(6) On October 21, 2008, the telephone hearing was held. On or about April 29, 2009, claimant petitioned to have the record reopened for additional medical evidence. The evidence was admitted to the record and resubmitted to the State Hearing Review Team for evaluation. May 19, 2009, after review of all medical evidence, the SHRT again denied claimant's application. SHRT decision, 5-19-09.

(7) Claimant asserts disability based on impairments caused by an accidental fall, diabetes, and arthritis in the knees.

(8) Claimant testified at hearing. Claimant is 47 years old, 5'4" tall, and weighs 180 pounds. Claimant completed high school and some college. He is able to read, write and perform basic math. Claimant does not have a driver's license. Claimant cares for his needs at home.

(9) Claimant's past relevant employment has been in construction.

(10) July 7, 2006, claimant underwent MRI of the spine that revealed small central disc herniation at C3-4, C4-5, and C5-6. With spinal stenosis at C5-C6, uncovertebral degenerative changes, particularly at C4-5 with narrowing of the neuroforamina on the right and possible impingement of the exiting nerve root; suspect an annular tear at C6-7 with no extruded disc material. (Claimant Exhibit A, pages 6-7.)

(11) November 16, 2006, claimant was examined by a neurologist and a letter was prepared that indicates the patient has full active and passive range of motion of the neck. No definitive motor or sensory deficits are noted. No reflex abnormalities are noted. No long-tract signs. There is no evidence of any cord compression and no evidence of nerve root compression. Doctor advises against surgical treatment and referred patient for aggressive rehab. (Claimant Exhibit A, page 4.) April 19, 2007, a physician's assistant wrote a letter indicating that claimant has undergone physical therapy and steroid shots without relief of pain. (Claimant Exhibit A, page 5.)

(12) August 18, 2007, claimant underwent x-rays of the knees bilaterally and report was prepared and a report was prepared that indicates there is no evidence of fracture, dislocation, bony or soft tissue abnormality. (Department Exhibit A, page 413.)

(13) February 7, 2008, claimant was examined by his physician. Treatment notes indicate claimant has Type 2 Diabetes with average sugars around 130. Physical exam revealed clear speech and steady gait. No JVD or bruits in neck. Heart has regular rate and rhythm, S1-S2, no murmur, rubs or clicks. Lungs are clear to auscultation. Respirations are unlabored. Abdomen/bowel sounds present and nontender. Ankles have no edema. A1C is 7.4. (Department Exhibit A, pages 401-402.)

(14) November 1, 2007, claimant's physician completed a Medical Examination Report (DHS-49) following physical examination that took place that same date. Doctor indicates diagnosis of diabetes. The physical exam is within normal limits. Patient is capable of lifting 25 pounds occasionally; standing and/or walking at least two hours in an eight-hour workday; performing a full range of repetitive actions with upper extremities bilaterally; and operating foot/leg controls with lower extremities bilaterally. Patient may occasionally be

limited in sustained concentration depending on glucose level. (Department Exhibit A, pages 317-318.) Treatment notes from January 2007 through September 2007 indicate claimant had tenderness to palpation of the paraspinal muscles of the cervical spine with spasm. Upper extremity strength was 3/5 to 4/5 on left, 5/5 on right. Deep tendon reflexes were decreased. Claimant was undergoing medical treatment. (Department Exhibit A, pages 371-374.)

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

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).

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).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

If an individual fails to cooperate by appearing for a physical or mental examination by a certain date without good cause, there will not be a finding of disability. 20 CFR 416.994(b)(4)(ii).

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, claimant is not engaged in substantial gainful activity and so is not disqualified from receiving disability at Step 1.

At Step 2, the objective medical evidence of record indicates that claimant has disc herniations and degenerative disc disease in his back. The medical evidence conflicts as to claimant's symptoms. Claimant's physician and physician's assistant indicate he has some

numbness in the hand and fingers with reduced range of motion. Neurologist does not have the finding and indicates that claimant has full and active range of motion in neck. No definitive motor sensory deficits noted. No reflex abnormalities. No evidence of poor compression or nerve root compression. Claimant was to undergo physical therapy. The objective medical evidence in the record indicates that claimant has Type 2 Diabetes that appears to be well under control. X-rays of the knees bilaterally revealed no evidence of arthritis. (Finding of Fact #10.)

At Step 2, the objective medical evidence of record is not sufficient to establish that claimant has severe impairments that have lasted or are expected to last 12 months or more and prevent employment at any job for 12 months or more. Therefore, claimant is disqualified from receiving disability at Step 2.

At Step 3, claimant's impairments do not rise to the level necessary to be specifically disabling by law.

At Step 4, claimant's past relevant employment has been in construction. See discussion at Step 2 above. (Finding of Fact #9-#14.) The objective medical evidence appears to establish that claimant would have difficulty with the heavy lifting and heavy work duties required by his past relevant employment in construction.

At Step 4, the objective medical evidence of record is sufficient to establish that claimant has impairments that have lasted or are expected to last 12 months or more and prevent claimant from performing a full range of duties required by his past relevant employment. Accordingly, claimant is not disqualified at Step 4.

At Step 5, see discussion at Step 2, above. (Finding of Fact #10-#14.)

At Step 5, the objective medical evidence of record is sufficient to establish that claimant retains the residual functional capacity to perform medium work activities. Considering

claimant's vocational profile (younger individual, high school education, and history of semi-skilled work, skills not transferrable) and relying on Vocational Rule 203.26, claimant is not disabled. Therefore, claimant is disqualified from receiving disability at Step 5.

Claimant does not meet the federal statutory requirements to qualify for disability.

Therefore, claimant does not qualify for Medical Assistance based on disability.

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).

2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads 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:

- (a) Recipient of Supplemental Security Income, Social Security or Medical Assistance due to disability or 65 years of age or older.
- (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.
- (c) A resident of an adult foster care facility, a home for the aged, a county infirmary, or a substance abuse treatment center.

- (d) A person receiving 30-day post-residential substance abuse treatment.
 - (e) A person diagnosed as having Acquired Immunodeficiency syndrome (AIDs).
 - (f) A person receiving special education services through the local intermediate school district.
 - (g) A caretaker of a disabled person as defined in subdivision (a), (b), (e), or (f) above.
- (2) Applicants for and recipients of the State Disability Assistance program shall be considered needy if they:
- (a) Meet the same asset test as is applied to applicants for the Family Independence Program.
 - (b) Have a monthly budgetable income that is less than the payment standard.
- (3) Except for a person described in subsection (1)(c) or (d), a person is not disabled for purposes of this section if his or her drug addiction or alcoholism is a contributing factor material to the determination of disability. 'Material to the determination of disability' means that, if the person stopped using drugs or alcohol, his or her remaining physical or mental limitations would not be disabling. If his or her remaining physical or mental limitations would be disabling, then the drug addiction or alcoholism is not material to the determination of disability and the person may receive State Disability Assistance. Such a person must actively participate in a substance abuse treatment program, and the assistance must be paid to a third party or through vendor payments. For purposes of this section, substance abuse treatment includes receipt of inpatient or outpatient services or participation in Alcoholics Anonymous or a similar program. 1995 PA 156, Sec. 605.
- (4) A refugee or asylee who loses his or her eligibility for the federal Supplemental Security Income program by virtue of exceeding the maximum time limit for eligibility as delineated in Section 402 of Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 U.S.C. 1612, and who otherwise meets the eligibility criteria under this section

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