

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: 2008-24591

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

October 15, 2008

Wayne 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 October 15, 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) On December 10, 2007, claimant filed an MA/SDA application alleging he is completely unable to engage in any type of substantial gainful work activity (is disabled).

(2) On March 25, 2008, the Medical Review Team (MRT) denied this application stating that claimant's physical and/or mental impairments did not meet the severity and/or durational criteria necessary to qualify for disability-based benefits.

(3) On April 23, 2008, the department notified claimant in writing that his application was denied.

(4) On June 3, 2008, claimant filed a hearing request to protest this denial.

(5) On July 22, 2008, the department's State Hearing Review Team (SHRT) again denied claimant's application stating their analysis and recommendation as follows:

The claimant has a history of arthritis and gout. His exams in 1/08 and 2/08 were basically unremarkable except for elevated blood pressure. However, there was no evidence of end organ damage. The claimant's treating physician has given sedentary work restrictions based on the claimant's physical impairments. However, this medical source opinion (MSO) is inconsistent with the great weight of the objective medical evidence and per 20 CFR 416.927(c)(2)(3)(4) and 20 CFR 416.927(d)(3)(4)(5), will not be given controlling weight. The collective objective medical evidence shows that the claimant is capable of performing any work.

The medical evidence of record does not document a mental/physical impairment(s) that significantly limits the claimant's ability to perform basic work activities. Therefore, MA-P is denied per 20 CFR 416.921(a). Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 due to lack of severity.

(6) On October 15, 2008, claimant's hearing was held; at the hearing, claimant waived the applicable time periods and requested he be allowed to submit additional medical information.

(7) On August 10, 2009, upon review of this information, SHRT again denied claimant's application with an analysis/recommendation identical to that issued on July 22, 2008,

meaning they found claimant's new information inconsequential (See also Finding of Fact #5 above).

(8) Claimant is a single, 43-year-old male with a general equivalency diploma (GED) who lives independently in a single story home; he has a valid driver's license and access to a roadworthy vehicle.

(9) Claimant stands approximately 6'1" tall and weighs approximately 260 pounds; he is left hand dominant.

(10) Claimant has not been employed in several years; he got laid-off from his long-term job as an underground pipe layer in 2004 or 2005 (heavy exertional work) and he has looked for a job since then but can't find one, per his testimony at the MA/SDA denial hearing held on October 15, 2008.

(11) Claimant alleges he is disabled due to arthritis pain and gout.

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

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).

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).

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).

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 he has not worked in several years; consequently, he cannot be disqualified from receiving disability benefits at Step 1.

At Step 2, claimant has the burden of proof to establish he has a severely restrictive physical or mental impairment, or combination of impairments, that have lasted or are expected to last for the requisite durations (12 months for MA/90 days for SDA).

There is no objective clinical medical evidence in this record to verify claimant suffers a severely restrictive physical or mental impairment. In fact, claimant testified he left his last job because he got laid-off and he has not been able to find another one since. Claimant has no mental impairments. Likewise, his physical examinations have all been basically unremarkable, except for a brief bout with bladder stone passage in June 2008 (Client Exhibit A, pgs 14 and 15). Consequently, this Administrative Law Judge finds claimant has failed to meet his burden of proof at Step 2, based upon his failure to establish the existence of severity and/or duration.

If claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of claimant's conditions does not give rise to a finding that he would meet a statutory listing in the code of federal regulations. As such, an analysis of Step 4 would be required.

If claimant had not already been denied at Step 2 above, this Administrative Law Judge would be required to deny him again at Step 4 based upon his ability to perform his past relevant work as a pipe layer. There is insufficient objective medical evidence upon which this Administrative Law Judge could find claimant unable to perform work he has engaged in the past. However, even if an analysis of Step 5 was required, claimant would be unsuccessful in establishing a legally disabling condition.

At Step 5 (the very last step required), the Administrative Law Judge must determine whether or not an applicant has the residual functional capacity to perform some other less strenuous tasks than existed in his prior job(s).

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).

Claimant has submitted insufficient objective medical evidence to establish he lacks the residual functional capacity to perform other less strenuous tasks than in his prior employment, or that he is physically unable to perform medium, light or sedentary tasks if demanded of him.

Some examples of unskilled light or sedentary jobs that claimant could perform are: an usher, counter clerk, surveillance system monitor and a furniture/rental consultant in a retail business. County business patterns show that over 751,000 workers are employed in Michigan retail industries, indicating that such jobs exist in significant numbers in this region's economy. Over 30,000 workers are employed in Michigan in amusement/recreational services where usher jobs are prevalent. Over 15,000 people are employed in public transportation and over 127,000 people are employed in general merchandise stores/photofinishing/laboratories and photography supply stores, indicating such jobs exist in significant numbers in this region's economy.

Claimant has failed to provide the necessary objective medical evidence to establish that he has a severe impairment or combination of impairments which would prevent him from performing any of these jobs for the requisite durations. As such, claimant could also be denied at Step 5

based upon the fact he has not established an inability to perform sedentary, light or medium work, even considering his documented impairments.

Under the Medical-Vocational Grid Rules, a younger applicant like claimant (age 43) with a high school education or the equivalent thereof (GED) and an unskilled work history who can perform sedentary, light or medium work is not considered disabled. Finally, because claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish he is unable to work for a period exceeding 90 days, claimant does not meet the disability criteria for SDA eligibility either.

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 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.

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