

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: 2008-25451

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

October 22, 2008

Benzie County DHS

ADMINISTRATIVE LAW JUDGE: Jana A. 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 22, 2008.

ISSUE

Whether claimant has established disability for Medical Assistance (MA).

FINDINGS OF FACT

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

- (1) April 14, 2008, claimant applied for MA and State Disability Assistance (SDA).
- (2) May 16, 2008, the Medical Review Team (MRT) approved claimant's SDA application and denied claimant's MA application. Department Exhibit A.

(3) May 19, 2008, the department sent claimant written notice that MA application was denied.

(4) July 9, 2008, the department received claimant's timely request for hearing.

(5) July 28, 2008, the State Hearing Review Team (SHRT) denied claimant's MA application.

(6) October 22, 2008, the telephone hearing was held.

(7) Claimant asserts disability based on impairments caused by a broken femur and torn rotator cuff.

(8) Claimant testified at hearing. Claimant is 39 years old, 5'11" tall, and weighs 220 pounds. Claimant completed high school and is able to read, write, and perform basic math. Claimant has a driver's license and is able to drive. Claimant cares for his needs at home.

(9) Claimant's past relevant employment has been in construction, factory work, and grocery store stock work.

(10) On or about January 26, 2008, claimant was involved in a motor vehicle accident and sustained multiple injuries. X-rays of the left femur revealed displaced fracture of the distal diaphysis of the left femur, probable non-displaced fracture along the superior aspect of the distal clavicle. Claimant underwent surgery to repair his broken femur. The surgery was without complications. Hospital treatment records indicate that claimant has diabetes mellitus type 2 non-compliant with medication due to lack of funds, history of hyperlipidemia with elevated triglycerides, and history of right shoulder rotator cuff repair in 2006 with removal of hardware in 2006 secondary to infection. Claimant recovered from his injuries and was discharged to home on January 30, 2008. Department Exhibit A, pgs 1-29.

(11) February 14, 2008, MRI of the right shoulder revealed post-surgical changes of an acromioplasty and repair of os acromiale without evidence of an inferior osteophyte or significant edema in this location; moderate to large full thickness rotator cuff tear with partial retraction of the cuff to the apex of the humeral head, this is new from prior study with mild atrophy; probable small posterior labral tear along the inferior portion of the posterior labrum; tendinopathy or partial tearing of the long head of the biceps and the subscapularis tendon. Department Exhibit A, pgs 30-31.

(12) March 27, 2008, x-rays of the left hip/femur revealed healing that appears to be slow; no increased lytic or blastic lesion noted, no new deformities are appreciated, well-maintained hardware. Department Exhibit A, pg 49. April 21, 2008, claimant visited his physician. Treatment notes indicate patient complains of increased pain at the left femur and knee. He continues to have shoulder pain. Physical exam revealed claimant has 90 percent forward flexion, 70 percent abduction, 20 percent of internal rotation and internal rotation to the sacrum. He has pain with trying to perform a lift off or belly press. He has tenderness to palpation around the shoulder girdle and has a lot of tenderness posteriorly along the greater tuberosity. On exam of the femur, there are well healed incisions with some tenderness to palpation distally around the interlock screws. No obvious knee instability is noted and he demonstrates good range of motion. Doctor opines that claimant should discontinue the crutch use and is scheduled for arthroscopic cuff repair of the right shoulder in the next six to eight weeks. Claimant can barely lift his right hand behind his head clinically today. Department Exhibit A, pg 50.

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 establishes that claimant suffered a broken femur during January 2008. He underwent surgery and was making adequate, but slow progress toward healing. In April 2008, claimant was able to discontinue the use of his single crutch. During February 2008, it was discovered claimant had a torn right rotator cuff. He suffered pain and limited range of motion with this injury. He was scheduled to have the rotator cuff surgically repaired on or about April or May 2008. No additional treatment records were provided. Finding of Fact 10-12.

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, factory work, and as a grocery stock person. See discussion at Step 2 above. Finding of Fact 9-12.

At Step 4, the objective medical evidence of record is not sufficient to establish that claimant has functional impairments that prevent claimant for a period of 12 months or more, from engaging in a full range of duties required by claimant's past relevant employment. Therefore, claimant is disqualified from receiving disability at Step 4.

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).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

At Step 5, see discussion at Step 2 above. Finding of Fact 10-12.

At Step 5, the objective medical evidence of record is sufficient to establish that claimant retains the residual functional capacity to perform at least light work activities that do not involve overhead reaching and repetitive actions with the right arm. Considering claimant's Vocational Profile (younger individual, high school education, and history of unskilled/semi-skilled work) and relying on Vocational Rule 202.21, 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 and the department properly denied the claimant's application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant has not established disability for Medical Assistance.

Accordingly, the department's action is, hereby, UPHELD.

/s/

Jana A. Bachman
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 12, 2010

Date Mailed: April 15, 2010

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.

JAB/db

cc:

