

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: 2008-30351

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 5, 2009

Muskegon 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 February 5, 2009. Claimant and his significant other 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 divorced, 50-year-old high school graduate with a valid driver's license who resides with his significant other in low income housing; he has an unskilled work history but he reports he has not been employed anywhere since 2000.

(2) Claimant continues to smoke against medical advise; consequently, his current medical schedule includes [REDACTED] as needed for shortness of breath symptoms not uncommon in patients with long term nicotine abuse (Department Exhibit #1, pgs 14, 20 and 41; Client Exhibit B, pg 1).

(3) Claimant is a non-insulin dependent diabetic with high cholesterol and high blood pressure, all under adequate control with his current prescription medications ([REDACTED] [REDACTED]) as long as medication compliance is maintained (Client Exhibit B, pgs 1 and 2).

(4) On August 29, 2007, claimant was treated briefly for constipation in a local hospital Emergency Room (ER) with one bottle of [REDACTED] and one Fleet enema to go (Department Exhibit #1, pgs 4-6).

(5) While there, claimant underwent several standardized tests (e. g., EKG, abdominal series, chest x-rays, comprehensive blood panel and urinalysis) all of which came back normal (Department Exhibit #1, pgs 1-9; 5).

(6) During a follow-up appointment with his treating doctor dated September 18, 2007, claimant was advised to drink lots of water, exercise and increase his dietary intake of green leafy vegetables; additionally, [REDACTED] have been prescribed for symptom management (Department Exhibit #1, pg 27; Client Exhibit B, pg 1).

(7) This doctor noted no other abnormalities, stating claimant was well nourished and well hydrated with normal gait, posture, mood and cognitive function (Department Exhibit #1, pg 27).

(8) Updated treatment records from May 9, 2008 note claimant's condition was stable; his physical examination was normal in all systems except superficial foot lesions

secondary to diabetes, treated with a topical prescription cream (Department Exhibit #1, pgs 58 and 59).

(9) In June 2008, the department initiated a medical review of claimant's impairments as required by policy after discovering the Social Security Administration (SSA) had issued claimant an unfavorable disability decision on April 4, 2007 (Department Exhibit #1, pgs 78-94).

(10) After this review, on August 19, 2008, the department notified claimant in writing he does not meet the federal and/or state definitions necessary to qualify for disability assistance; consequently, claimant filed a timely hearing request to protest this determination.

(11) Claimant has a diagnosis of Depression Disorder, NOS; he attends outpatient mental health counseling approximately once a month and [REDACTED] has been prescribed for symptom management.

(12) A [REDACTED] report dated July 7, 2008 indicates claimant was returning for follow-up counseling; this report states in relevant part:

...The onset of the follow-up depression has been gradual and has been occurring in a persistent pattern for months. The course has been recurrent. The follow-up depression is described as mild.

...He reports feeling sad and depressed at times but feels well at this time. He reports some progress with using the SMGs discussed during the last session. He agrees to continue to use Self Management Goals. Patient denies recent substance abuse. He will use positive imagery to address the depression. He will return to discuss progress. Next session 3 weeks (Department Exhibit #1, pg 61).

(13) Claimant's assigned Self Management Goals (SMGs) are: (1) to increase physical activity; (2) to increase participation in pleasurable activities; and (3) to increase participation in spiritual activities (Department Exhibit #1, pg 61).

(14) Claimant's updated bilateral knee x-rays taken in September 2008 verify some degenerative changes; additionally, his December 2008 lumbar spine MRI scan (compared with an April 29, 2005 study) was noted as stable at L4-L5/L5-S1 with congenital stenosis and some degeneration verified at L3-L4 (Client Exhibit A, pgs 3-6).

(15) [REDACTED] have been prescribed for management of claimant's reported pain symptoms (Client Exhibit B, pg 1).

(16) Claimant has a history of [REDACTED] overuse, stated in the denied April 4, 2007 Social Security Administration (SSA) disability decision as follows:

The claimant's allegations and statements to his doctors are more consistent with drug-seeking behavior than with any complaints of impairments. On May 22, 2003 the claimant was warned about using [REDACTED] pain medications, in the course of a conversation about his desire to have the doctor write a note to excuse him from a work training program (Ex 1 F/page 6). When his doctor referred him for physical therapy, he was dropped from the program in less than 30 days due to his failure to keep appointments (Ex 12 F).

On August 19, 2004 the claimant presented to his primary care physician after a two-year absence. He reported ongoing back pain secondary to a work injury, and that he had been receiving ongoing care through the emergency room. The doctor noted that the records only reflected two visits to the ER. [REDACTED] was prescribed. Also noted was an addendum that it was learned that the claimant had actually been seeing another doctor, and had tested positive for [REDACTED] and multiple [REDACTED] about one week previous. Nevertheless, the other doctor had again prescribed [REDACTED] the primary care doctor noted that the claimant was seeking [REDACTED] from more than one source (Ex 18 F/117) (Department Exhibit #1, pgs 85 and 86).

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.

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).

Claimant is not disqualified from receiving MA/SDA at Step 1, because he has not been gainfully employed in several years.

At Step 2, claimant's diagnosed impairments, in combination, have left him with some range of motion limitations and pain. However, it must be noted no severe mental impairments have been shown, and claimant's depressive disorder appears fully capable of adequate management with the ongoing outpatient counseling and antidepressant medication currently being prescribed.

It must be noted the law does not require an individual to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an individual's symptoms can be managed to the point where substantial gainful employment can be achieved, a finding of not disabled must be rendered. Nevertheless, claimant's medically managed physical impairments meet the *de minimus* level of severity and duration required for further analysis.

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, the analysis must continue.

At Step 4, claimant's description of his remote work history and the activities associated with it was vague during his testimony at hearing. Consequently, this Administrative Law Judge is unable to fully assess the exertional level(s) required when carrying out those job duties. As such, this Administrative Law Judge will proceed to the very last step in the sequential evaluation process, giving claimant every benefit of doubt regarding Step 4.

At Step 5, the final step in the required analysis, an individual's age, education and previous work experience (vocational factors) must be assessed in light of the documented impairments. Claimant is a 50-year-old individual with a high school education and an unskilled work history. Consequently, at Step 5, this Administrative Law Judge finds, from the medical and psychological evidence of record, that claimant retains the residual functional capacity to perform at least light work, as that term is defined above. Therefore, claimant is not disabled under the MA/SDA definitions, because he can return to other light work, as directed by Medical-Vocational Grid Rule 202.10.

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 action is *AFFIRMED*.

/s/

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

Date Signed: February 1, 2010

Date Mailed: February 2, 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.

MBM/db

cc:

[REDACTED]