

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: 2008-4570
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 5, 2008
Montcalm 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 March 5, 2008.

ISSUE

Whether the Department of Human Services (department) properly determined that claimant has not established disability for purposes of 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) During August 2006, claimant was a recipient of MA. Claimant's assistance was due for medical review. Claimant submitted updated medical records for department consideration.

(2) October 1, 2007, the Medical Review Team denied claimant's medical review. Department Exhibit (department) A.

(3) October 5, 2007, the department sent claimant written notice that MA would terminate. The action went into effect as scheduled.

(4) October 25, 2007, the department received claimant's timely request for hearing.

(5) January 28, 2008, the State Hearing Review Team (SHRT) denied claimant's medical review. Department B.

(6) March 5, 2008, the telephone hearing was held. Prior to the close of the record, claimant requested the record be left open for additional medical evidence. Claimant waived his right to a timely hearing decision. July 16, 2008, after review of all medical evidence, the SHRT again denied claimant's medical review. SHRT Decision, 7/16/08.

(7) Claimant asserts disability based on impairments caused by nervous condition, bad back, watery eyes, and nasal drainage.

(8) Claimant testified at hearing. Claimant is 52 years old, 5' 10" tall, and weighs 185 pounds. Claimant completed high school and is able to read, write and perform basic math. Claimant is able to care for his needs at home. Claimant has a driver's license and is able to drive.

(9) Claimant's past relevant employment has been as a machine operator, janitor, factory worker, and in lawn maintenance.

(10) At last positive decision in August 2005, claimant was diagnosed with right ulnar nerve entrapment and was scheduled for surgery in August 2005.

Department A, pages 49-50. Claimant was diagnosed with Graves eye disease.

Department A, pages 51-52. MRI had revealed mild degenerative changes in his cervical spine without significant spinal canal or neural foraminal stenosis. Department A, pages 67-69. March 25, 2005 x-ray of the lumbosacral spine revealed no acute abnormalities. Department A, page 94.

(11) At review, claimant applied for Social Security disability benefits (RSDI) and was denied. He requested a hearing and the Administrative Law Judge upheld the Social Security Administration (SSA) denial of disability. Sworn testimony.

(12) At review, MRI of the lumbar spine conducted on or about September 11, 2007 revealed diffuse mild central canal stenosis from T11 through L4, primarily congenital in nature secondary to short pedicles. This is also resulting in diffuse mild neural foraminal stenosis and very mild degenerative change present with mild diffuse annular bulges contributing little to the central canal narrowing. There are mild osteophytic changes throughout the facet joints, contributing only minimally to the neural foraminal stenosis. No frank disc extrusions are demonstrated. Report, [REDACTED], March 28, 2007.

(13) At review, EMG conducted on October 30, 2007 revealed evidence of moderate right ulnar mononeuropathy at or above the elbow, primarily demyelinating in nature, without any significant axonal changes on needle exam; there is evidence of mild left ulnar NCV slowing across the elbow without any corresponding needle exam changes in the corresponding ulnar innervating muscles; there is localized motor denervation potentials in the left abductor digiti minimi, with ulnar sensory changes, suggestive of ulnar neuropathy more distally at the wrist. Report, [REDACTED] 10/30/07.

(14) At review, on September 5, 2007, claimant underwent an independent medical examination. A narrative report was prepared that indicates, in pertinent part: Mental status is normal. Skin is normal other than 5” incision noted over the thyroid area and 4” incision noted in the ulnar notch of the right elbow. Visual acuity right eye was 20/40, left eye 20/70 without corrective lenses. Pupils are equal, round, and reactive to light. Neck is supple without masses. Breath sounds are clear to auscultation and symmetrical. There is no accessory muscle use. Heart has regular rate and rhythm without enlargement. There is normal S1 and S2. Abdomen has no organomegaly or masses. Bowel sounds are normal. There is no clubbing, cyanosis, or edema. Peripheral pulses are intact. There is no evidence of joint laxity, crepitation or effusion. There is full fist and full grip strength bilaterally. Dexterity is not impaired. There is hypthenar atrophy bilaterally. Claimant could pick up a coin, button clothing, and open a door. Claimant had no difficulty getting on and off the exam table, no difficulty heel and toe walking, no difficulty squatting, and no difficulty hopping. There is mild lumbar spine straightening. There is about 10 degrees scoliosis in the lower thoracic upper lumbar spine. Range of motion is full in all joints tested, with the exception of MP joints, PIP joints, and DIP joints bilaterally. Cranial nerves are intact. Motor strength and tone are normal. Sensory is intact to light touch and pinprick. Reflexes in the lower extremities are 2+ and symmetrical. Romberg is negative. Claimant walks with normal gait without assistive device. Department A, Report, [REDACTED], pages 3-7.

(15) At review, MRI of right hip conducted on June 4, 2007 revealed no evidence of lipoma or other soft tissue mass; equivocal mild increase signal in the quadriceps muscle which may be artifactual or which may represent minimal

myositis/muscle strain; minimal osteoarthritis of the right hip. Report, [REDACTED], [REDACTED], 6/4/07. September 11, 2007, claimant was examined by an orthopedist who observed soft tissue mass, right hip; bilateral ulnar neuropathy; and initial degenerative disc disease, lumbosacral spine. Claimant was to be scheduled for excision of soft tissue mass, right hip and EMG of both upper extremities. Report, [REDACTED] [REDACTED] 9/11/07. October 11, 2007, claimant was status post excision of large lipoma and underwent evacuation of hematoma, right thigh. Report, [REDACTED] [REDACTED], October 17, 2007. October 29, 2007, physical exam revealed slightly more swelling on thigh due to fluid collection underneath the skin incision; incision has completely healed and there are no signs of inflammation. Report, [REDACTED], October 29, 2007.

(16) When comparing the objective medical evidence at review with the objective medical evidence provided at last positive decision, it appears that medical improvement of claimant's physical condition has occurred or that claimant was not disabled. At last positive decision, claimant was scheduled for neurosurgery on his arm, he had Graves Disease, and mild degenerative changes in his spine. At review, claimant is post neurosurgery on his arm, post excision of lipoma, right thigh, has hypthenar bilaterally, and mild degenerative changes in his spine. Grip strength and dexterity are not impaired. Finding of Fact 13-15.

(17) Claimant's medical improvement is related to his ability to work.

(18) Claimant is capable of performing work activities.

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; MSA 16.490(15). 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).

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).

Medical improvement. Medical improvement is any decrease in the medical severity of your impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled. A determination that there has been a decrease in medical severity must be based on changes (improvement) in the symptoms, signs and/or laboratory findings associated with your impairment(s).... 20 CFR 416.994(b)(1)(i).

Medical improvement not related to ability to do work. Medical improvement is not related to your ability to work if there has been a decrease in the severity of the impairment(s) as defined in paragraph (b)(1)(i) of this section, present at the time of the most recent favorable medical decision, but no increase in your functional capacity to do basic work activities as defined in paragraph (b)(1)(iv) of this section. If there has been any medical improvement in your impairment(s), but it is not related to your ability to do work and none of the exceptions applies, your benefits will be continued.... 20 CFR 416.994(b)(1)(ii).

Medical improvement that is related to ability to do work. Medical improvement is related to your ability to work if there has been a decrease in the severity, as defined in paragraph (b)(1)(i) of this section, of the impairment(s) present at the time of the most recent favorable medical decision **and** an increase in your functional capacity to do basic work activities as discussed in paragraph (b)(1)(iv) of this section. A determination that medical improvement related to your ability to do work has occurred does not, necessarily, mean that your disability will be found to have ended unless it is also shown that you are currently able to engage in substantial gainful activity as discussed in paragraph (b)(1)(v) of this section.... 20 CFR 416.994(b)(1)(iii).

Functional capacity to do basic work activities. Under the law, disability is defined, in part, as the inability to do any substantial gainful activity by reason of any medically

determinable physical or mental impairment(s).... 20 CFR 416.994(b)(1)(iv).

...A decrease in the severity of an impairment as measured by changes (improvement) in symptoms, signs or laboratory findings can, if great enough, result in an increase in the functional capacity to do work activities.... 20 CFR 416.994(b)(1)(iv)(A).

When new evidence showing a change in signs, symptoms and laboratory findings establishes that both medical improvement has occurred and your functional capacity to perform basic work activities, or residual functional capacity, has increased, we say that medical improvement which is related to your ability to do work has occurred. A residual functional capacity assessment is also used to determine whether you can engage in substantial gainful activity and, thus, whether you continue to be disabled.... 20 CFR 416.994(b)(1)(iv)(A).

...Point of comparison. For purposes of determining whether medical improvement has occurred, we will compare the current medical severity of that impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled to the medical severity of that impairment(s) at that time.... 20 CFR 416.994(b)(1)(vii).

...If medical improvement has occurred, we will compare your current functional capacity to do basic work activities (i.e., your residual functional capacity) based on the previously existing impairments with your prior residual functional capacity in order to determine whether the medical improvement is related to your ability to do work. The most recent favorable medical decision is the latest decision involving a consideration of the medical evidence and the issue of whether you were disabled or continued to be disabled which became final. 20 CFR 416.994(b)(1)(vi).

...Medical improvement. Medical improvement is any decrease in the medical severity of impairment(s) present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled and is determined by a comparison of prior and current medical evidence which must show that there have been changes

(improvement) in the symptoms, signs or laboratory findings associated with that impairment(s). 20 CFR 416.994(b)(2)(i).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2001 PA 82. The Family Independence Agency (FIA or agency) administers the SDA program pursuant to MCL 400.10, et seq., and MAC R 400.3151-400.3180. Agency 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 exempted from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting 1 or more of the following requirements:

- (a) 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.

- (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 shall be eligible to receive benefits under the state disability assistance program.

At Step 1, claimant's impairments do not meet or equal any Social Security Listing. Finding of Fact 11.

At Step 2, at last positive decision, claimant was suffering from right ulnar nerve entrapment and was scheduled for surgery. At review, EMG revealed moderate right ulnar mononeuropathy at or above the elbow, primarily demyelinating in nature, without any significant axonal changes on needle exam and evidence of mild left ulnar NCV slowing across the elbow without any corresponding needle exam changes in the corresponding ulnar innervating muscle, with localized motor denervation potentials in the left abductor digiti minimi, with ulnar sensory changes. Objective medical testing revealed hypthenar atrophy bilaterally. Claimant has full fist and full grip strength bilaterally. Dexterity is not impaired. Claimant could pick up a coin, button clothing, and open a door. Claimant had no difficulty getting on and off the exam table, no difficulty heel and toe walking, no difficulty squatting, and no difficulty hopping. There is mild lumbar spine straightening. There is about 10 degrees scoliosis in the lower thoracic upper lumbar spine. Range of motion is full in all joints tested, with the exception of MP joints, PIP joints, and DIP joints bilaterally. Cranial nerves are intact. Motor strength and tone are normal. Sensory is intact to light touch and pinprick. Reflexes in the lower extremities are 2+ and symmetrical. Romberg is negative. Claimant walks with normal gait without assistive device. At hearing, claimant testified to watery eyes and nasal drainage due to Graves disease. The objective medical evidence of record does not indicate severe impairments due to these conditions. Department A; Finding of Fact 10-16. Accordingly, the medical evidence of record is sufficient to

establish that claimant has medically improved or that he did not meet the disability requirements at last positive decision.

At Step 3, claimant has medical improvement. Finding of Fact 16. See discussion at Step 2, above.

At Step 4, claimant's medical improvement is related to his ability to perform work. See Step 3, above. Finding of Fact 17.

At Step 5, the objective medical evidence of record does not establish severe physical and/or cognitive impairments or limitations. See discussion at Step 2, above. Finding of Fact 11-15. Therefore, the objective medical evidence of record is sufficient to establish that claimant does not have current severe impairments that prevent all work for 12 months or more.

At Step 6, claimant's past relevant employment has been as a machine operator, janitor, factory worker, and in lawn maintenance. Finding of Fact 9. The objective medical evidence of record does not establish severe impairments or limitations that would prevent claimant from performing the duties required by these jobs. See discussion at Step 2, above. Finding of Fact 11-18. Therefore, the medical evidence of record is sufficient to establish that claimant does not have impairments that are so severe as to prevent him from performing the tasks required by past relevant employment.

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 7, the medical evidence of record establishes that claimant has hypthenar atrophy bilaterally. Range of motion is reduced in MP, PIP, and DIP joints bilaterally. Claimant has full fist and grip strength bilaterally with no impairment to dexterity. He has mild degenerative changes in his spine. No severe functional impairments were found in claimant's other systems. See discussion at Step 2, above. Finding of Fact 10-15. Accordingly, the objective medical evidence of record is sufficient to establish that claimant is capable of performing at least medium work activities and so is not disabled. Finding of Fact 18.

After careful examination of the record and for the reasons discussed at Steps 1 through 7 above, the Administrative Law Judge decides that claimant does not meet the federal statutory requirements for disability. Therefore, claimant does not meet the disability requirement for MA based on disability.

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 purposes of 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: [REDACTED] _____

Date Mailed: [REDACTED] _____

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:

