

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: 2008-8725

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

July 30, 2008

Lake 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, an in-person hearing was held on July 30, 2008. 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 smoker who completed 11th grade; he lives with his significant other in [REDACTED]

(2) Claimant stands approximately 5'8" tall and he is medically obese at approximately 206 pounds (BMI=31.3); he is left hand dominant (Department Exhibit #3, pg 2).

(3) Claimant has a valid Michigan photo chauffeur's ID; additionally, he has a factory work history last employed at [REDACTED] until 2004 when he was fired (Department Exhibit #3, pg 1).

(4) Claimant was hospitalized between September 1, 2007 and September 7, 2007 because he suffered an acute, moderate-sized nonhemorrhagic infarction (stroke) involving his left frontal lobe (Department Exhibit #1, pg 139 and 144-157).

(5) Claimant initially had right-sided paralysis (arm/leg) and significant post-stroke expressive aphasia which fully resolved after therapy.

(6) Claimant's September 13, 2007 post-stroke progress report states in relevant part:

...Respiratory: he has somewhat chronic shortness of breath, nothing unusual there. Neurosensory: since the stroke he has some mild difficulties with saying what he wants to say and speaking correctly and he also does have some short term memory problems. Physical therapy, OT and speech have been recommended. Other than that, [claimant] is sitting here feeling fine today.

He has good carotid pulses. I do not hear any bruits. No neck masses or adenopathy. Heart rate and rhythm are regular. No heaves, thrills, gallops, or murmurs. Chest shows some very minimal fine rales, which I think is due to his smoking because he has no acute chest complaints. Noted that he does continue to smoke in spite of his stroke. We had a long conversation about that today. Belly is soft and nontender. No organomegaly. Bowel sounds are normal. No bruits. No swelling in the legs. He has good grip strength. He has good arm strength. His reflexes are equal bilaterally. He has a negative Babinski. His blood pressure and pulse rate are good. Afebrile and oriented x 3...

...I did strongly advise him that his number one risk factor to have another heart attack or stroke is his smoking. He absolutely, positively has to quit. He is on medications to manage other medical issues...(Department Exhibit #1, pg 21).

(7) Claimant's outpatient therapy discharge assessment notes he met or exceeded his goals and was motivated to succeed (Department Exhibit #1, pgs 58-60).

(8) While hospitalized, claimant underwent an electrocardiogram on September 1, 2007 which revealed normal sinus rhythm and normal R wave progression; additionally, claimant's carotid duplex examination was normal but his echocardiogram verified a borderline low ejection fraction at 53% (Department Exhibit #1, pgs 135 and 140-143).

(9) The treating doctors then speculated claimant may have had a mild myocardial infarction at some indefinite past date after taking another electrocardiogram on September 2, 2007 (Department Exhibit #1, pg 137).

(10) On September 20, 2007, claimant filed a disability application seeking assistance with the medical bills incurred as a result of his stroke and a monthly cash grant (MA/SDA).

(11) Claimant is not involved in any mental health treatment or counseling and nothing in the medical records submitted to date evidences a severe mental, emotional or cognitive impairment.

(12) Claimant underwent an independent functional assessment on April 10, 2008 which noted some unexplained inconsistencies in his performance; however, this specialist concluded as follows:

In summary, it sounds as though he may have had a myocardial infarction which did not cause any other current problems, though I do not have an EKG to review. His chest sounds as though there may be an interstitial process going on, would explain some shortness of breath on exertion, but shows no shortness of breath at rest or with mild activity, or during this physical assessment. He certainly should quit his smoking habit and begin some type of aerobic exercise program, even if it is walking. I believe he can lift 40-50 lb from the floor to the knees, 40 lb from the knees to the chest and demonstrated 30 lb overhead, 15 in each hand. He can carry this same weight without difficulty. I would suggest that he have a two stair flight limit and a hand rail available. He gives a picture of one who might not do well in a fast-paced repetitive job, but should be able to function in one from mild to moderate and within the above parameters (Department Exhibit #3, pgs 1-3).

(13) As of claimant's July 24, 2008 hearing date (10 months post-stroke), his ongoing medications included high blood pressure pills and a couple of inhalers, not unusual for someone with his nicotine abuse habit (See Finding of Fact #6 above).

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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

...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).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques.

Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

...A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled. 20 CFR 416.927(e).

[As Judge]...We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled.... 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).

Additionally, Social Security Ruling 96-4p (SSR 96-p) states in relevant part:

A “symptom” is not a “medically determinable physical or mental impairment” and no symptom by itself can establish the existence of such an impairment. In the absence of a showing that there is a “medically determinable physical or mental impairment” an individual must be found not disabled at Step 2 of the sequential evaluation process. No symptom or combination of symptoms can be the basis for a finding of disability, no matter how genuine the individual’s complaints may appear to be, unless there are medical signs and laboratory findings demonstrating the existence of a medically determinable physical or mental impairment.

In addition, 20 CFR 404.1529 and 416.929 provide that an individual’s symptoms, such as pain, fatigue, shortness of breath, weakness, or nervousness, will not be found to affect the individual’s ability to do basic work activities...unless medical signs and laboratory findings show that there is a medically determinable physical or mental impairment(s) that could reasonably be expected to produce the symptom(s) alleged.

Claimant does not qualify for the MA/SDA coverage he seeks because he has not presented any objective medical records to establish the presence of a physical or mental condition supportive of his severe, chronic, pervasive and debilitating pain complaints. In fact, claimant’s medical records reveal nothing more than a mild stroke, the residual symptoms of which have fully resolved. Furthermore, it must be noted the law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant’s pain can be managed to the point where substantial gainful employment can be achieved, a finding of not disabled must be rendered. Claimant’s current prescription

medications can reasonably be expected to provide adequate symptom control for his diagnosed conditions, which include high blood pressure and self-reported pain. As such, this Administrative Law Judge concludes claimant is fully capable of working in a wide variety of unskilled jobs currently existing in the national economy, which is the standard to be applied in disability determination cases. As such, claimant's September 20, 2007 MA/SDA application must remain denied.

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: September 8, 2009

Date Mailed: September 8, 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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