

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: 2009-10468
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 18, 2009
Tuscola 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 February 18, 2009. Claimant personally appeared and testified. He was assisted by patient advocate [REDACTED]

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 twice divorced, 53-year-old smoker (3-4 packs per week) with a high school education (completed 12th grade) who has not been gainfully employed since 1998;

he resides independently in [REDACTED] and he has a valid, CDL-certified driver's license (Department Exhibit #1, pgs 155 and 156).

(2) When employed, claimant performed unskilled, heavy exertional work (e. g., construction, bricklaying, elevator bean bagging, cement finishing, semi truck driving) (Department Exhibit #1, pg 156).

(3) Claimant's medical records verify low back pain treatment beginning in 2006; additionally, he was briefly hospitalized on an involuntary petition to the psych ward of a local facility in 2002 and subsequently diagnosed with Explosive Disorder and Bipolar Disorder (Department Exhibit #1, pgs 135-137, 155 and 163-173).

(4) Claimant has an extensive polysubstance abuse history and multiple arrests for assaults, but he now reports he is alcohol and illicit drug free since completing inpatient substance abuse treatment in 2007.

(5) On November 28, 2006, claimant filed his first disability-based application (MA/SDA) based on the above-mentioned back pain and mental health history, the denial of which led to an Administrative Hearing held May 3, 2007 (Department Exhibit #1, pgs 114-126).

(6) That Hearing Decision, issued August 9, 2007, states in relevant part:

Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to claimant's ability to perform work. In addition, claimant did testify that he does receive relief from pain medication. Also, claimant was able to answer all the questions at the hearing without hesitation and was oriented to time and place. Claimant is disqualified from receiving disability at Step 5 based upon the fact that he has not established by objective medical evidence that he cannot perform light or sedentary work even with his impairments (Department Exhibit #1, pg 125).

(7) On October 6, 2008, claimant filed another MA/SDA application (also denied, which gave rise to this appeal.

(8) On August 8, 2007, claimant underwent a lumbar spine MRI scan which confirms right S1 radiculopathy secondary to a small L5-S1 disc herniation abutting claimant's S1 nerve root, in addition to disc desiccation at L3-4 and L5-S1 (Department Exhibit #1, pgs 74-75 and 84).

(9) On April 23, 2008, claimant had an appointment with a referral neurosurgeon who assessed his condition as follows:

I reviewed an MRI scan and he has very early degenerative changes at L3-L4 and L5-S1, where there is a decrease in these heights of the disc and a signal change, but there is no advanced degenerative changes in the disc or the adjacent end plates on the canal. The lateral recesses are normal (Department Exhibit #1, pgs 52 and 53).

(10) This neurosurgeon did not recommend surgical intervention.

(11) Claimant has a sporadic, outpatient [REDACTED] treatment record, most recently returning for initial assessment in June 2008, four months before the month he filed his disputed MA/SDA application (Department Exhibit #1, pgs 30-33; Department Exhibit #2, pgs 18-21)(See also Finding of Fact #7 above).

(12) Claimant's August 2008 [REDACTED] medication review reveals he was well-stabilized on [REDACTED] at that time, and his Mental Residual Functional Capacity Assessment (DHS-49E) completed in September 2008 indicates claimant was not significantly limited or only moderately limited in the majority of the four areas required to be assessed during the disability determination process (Department Exhibit #1, pgs 19-20 and 35).

(13) Likewise, an October 2008 Medical Examination Report (DHS-49) indicates claimant was within normal range in all physical areas except his mid-back (thoracic spine), where he reported tenderness and pain on palpation; otherwise, no abnormalities (curvature or deformities) were seen (Department Exhibit #1, pg 9).

(14) On December 10, 2008, claimant underwent an independent medical examination where the examining doctor noted claimant's compliance with the medications prescribed by ██████████ A ██████████) had him stabilized and "feeling much better" (Department Exhibit #2, pg 1)(See also Finding of Fact #12 above).

(15) The only other prescription medication claimant was taking at that time was ██████████ for pain management (Department Exhibit #2, pg 2).

(16) Likewise, recent x-rays of claimant's right and left hands were reviewed; the examining doctor specifically ruled out degenerative arthritis but noted psoriasis was present in claimant's elbow, knee and hands with decreased right hand grip strength demonstrated subjectively (Department Exhibit #2, pg 4).

(17) This examining doctor opined the clinical evidence did not support claimant's need for a walking aid but claimant stated at hearing he sometimes uses a non-prescribed cane (Department Exhibit #2, pg 8).

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 employed in several years (See Finding of Fact #1 above).

At Step 2, claimant's diagnosed impairments, in combination, have left him with some range of motion limitations and pain. However, the current prescription medications have been shown capable of adequate management, given the objective medical test results presented.

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 symptoms can be managed to the point where substantial gainful employment can be achieved, a finding of not disabled must be rendered. Nevertheless, this Administrative Law Judge finds claimant's medically managed physical and mental 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, the record reveals claimant is not and can never be medically cleared to return to heavy exertional work activity due to his lower lumbar impairments. As such, this analysis must continue.

At Step 5, an applicant's age, education and previous work experience (vocational factors) must be assessed in light of all documented impairments. Claimant is a 53-year-old high school graduate with a heavy exertional, 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 unskilled light work, as that term is defined above even with his impairments. This finding is consistent with the previous Administrative Law Judge's decision (See Finding of Fact #6 above).

Claimant's biggest barrier to employability appears to be his lack of recent connection to the competitive work force. Claimant should be referred to [REDACTED] [REDACTED]) for assistance with job training and/or placement consistent with his skills, interests and abilities. Claimant is not disabled under the MA/SDA definitions, because he can return to other light work, as directed by Medical-Vocational Rule 202.13.

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 application denial action is AFFIRMED.

/s/

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

Date Signed: February 10, 2010

Date Mailed: February 11, 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.

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