

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: 2009-1179
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 3, 2009
Grand Traverse County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

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 3, 2009. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and State Disability Assistance (SDA)?

FINDINGS OF FACT

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

- (1) In July 29, 2008, claimant filed an application for Medical Assistance, State Disability Assistance benefits and retroactive Medical Assistance benefits to June 2008.
- (2) On September 3, 2008, the Medical Review Team denied claimant's application stating that claimant's impairments do not meet duration.

(3) On September 4, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On September 18, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On October 17, 2008, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the claimant has suffered bilateral fractures. He has had surgical repair. It is expected that his condition will heal and not prevent him from working. Medical opinion was considered in light of 20 CFR 416.927. The evidence in the file does not demonstrate any other impairment that would pose a significant limitation. The medical evidence of record indicates that the claimant's condition is improving or is expected to improve within 12 months from the date of onset or from the date of surgery. Therefore, MA-P is denied due to lack of duration under 20 CFR 416.909. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 as the impairments would not preclude all work for 90 days.

(6) Claimant is a [REDACTED] whose birth date is [REDACTED]. Claimant is [REDACTED]. Claimant attended one year of college and studied general studies. Claimant is able to read and write and does have basic math skills.

(10) Claimant is currently employed at [REDACTED] as a tube operator where he has been employed for approximately 2 months working 40 hours per week a [REDACTED] per hour.

(12) Claimant alleges as disabling impairments: a fracture of both wrists and a closed period of comp or disability.

CONCLUSIONS OF LAW

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).

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).

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).

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).

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 engaged in substantial gainful activity and thus he is precluded from receiving disability benefits at Step 1. However, this Administrative Law Judge will proceed through the sequential evaluation process for the sake of argument.

At Step 2, the objective medical evidence on the record indicates that medical records in the file indicated that claimant suffered bilateral scaphoid fractures as the result of a fall while skateboarding. He required open reduction and internal fixation surgery to aid in proper healing. The DHS-49 in the file indicates that claimant was temporarily disabled for six weeks from [REDACTED] and could do no lifting at all and could use neither hand for any repetitive action

because he required post operative casting of his wrist for 6 weeks followed by 4 to 6 weeks in splint cover (page 68 of the Medical Reports). Claimant was normal in all other areas of examination.

The evidentiary record indicated that claimant did have a severe impairment but his severe impairment did not last or was not expected to last for a duration of 12 months. Therefore, claimant is disqualified from receiving disability at Step 2.

If claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of claimant's condition would not give rise to a finding that he would meet a statutory listing in the code of federal regulations.

If claimant had not already been denied at Step 2, this Administrative Law Judge would have to deny him again at Step 4 based upon his ability to currently perform work. Claimant is currently working as a tube operator for the [REDACTED]. He works 40 hours per week earning [REDACTED] per hour and has to lift between 15 and 20 pounds on a repetitive basis. Therefore, claimant is disqualified from receiving disability at Step 4.

The SDA program differs from the federal MA regulation in that the duration 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. Claimant does not meet the definition of disabled under the MA-P program because his impairments do not meet duration, since he got hurt in [REDACTED] and his impairments would not meet duration since he went back to work in approximately [REDACTED]. However, claimant did not have bilateral manual hand dexterity for the months of [REDACTED] and [REDACTED]. This Administrative Law Judge finds that claimant was considered to be medically disabled for the months of [REDACTED] based upon the fact that he had two

fractured wrists and did not have bilateral manual hand dexterity for that time period. Claimant did meet the disability criteria for State Disability Assistance benefits for the months of [REDACTED] [REDACTED] since the application date is July 29, 2008.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance and retroactive Medical Assistance benefits. Claimant's impairments did not meet duration. The department has established this case by a preponderance of the evidence. However, claimant did meet the definition of medically disabled under the State Disability Assistance program as of the July 29, 2008 application date and did meet the standard of disability for a closed period of time from July, August and September 2008.

Accordingly, the department's decision is partially REVERSED. The department is ORDERED to reinstate claimant's July 29, 2008 State Disability Assistance application and if claimant is otherwise eligible, the department is ORDERED to pay to claimant any State Disability Assistance benefits to which he is entitled for the months of July, August and September 2008.

/s/ _____
Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed February 12, 2009

Date Mailed February 12, 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 mailing 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.

LYL/vmc

cc:

A large black rectangular redaction box covers the names of the recipients listed in the 'cc:' field.