

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: 2009-16513
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 12, 2009
Monroe 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 May 12, 2009. Claimant and his wife personally appeared and testified. He was assisted by [REDACTED].

ISSUE

Did the department properly determine claimant is not disabled by Medicaid (MA) 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 married, 52-year-old male with a tobacco use disorder (pack per day/25 + years) and a high school education who has been unemployed since he was fired from

his most recent job in window manufacturing in 2004 due to “bogus charges,” per self report (Department Exhibit #1, pgs 22-23 and 75-78).

(2) In 2005, claimant underwent left shoulder arthroscopy secondary to an injury which occurred at work (Department Exhibit #1, pg 49).

(3) In February 2007, claimant reported minimal improvement in his left shoulder pain levels despite a history of conservative treatment (physical therapy/injections/pain medications)) (Department Exhibit #1, pg 41).

(4) Left shoulder x-rays taken that year (2007) showed left shoulder impingement syndrome and severe post-injury arthritis; consequently, claimant underwent a posterior labral repair/reconstruction on April 23, 2007 (Department Exhibit #1, pgs 41-43 and 50).

(5) Claimant’s August 14, 2007 post-surgical progress report again notes no reported pain improvement after surgical repair and the attending orthopedic surgeon opined claimant’s Grade 4 (severe) glenohumeral joint arthritis was worse than expected (Department Exhibit #1, pg 41).

(6) By November 2007 (7 months post-surgery), this specialist conceded claimant’s attempted posterior labral repair/reconstruction failed to fix his problem (Department Exhibit #1, pg 40).

(7) By January 2008, left total shoulder arthroplasty was being medically recommended (Department Exhibit #1, pg 36).

(8) On July 11, 2008, claimant applied for disability-based MA; when that application was denied, claimant filed a timely hearing request.

(9) Claimant’s hearing was held on May 12, 2009.

(10) Claimant stands approximately 5'9" tall, weighs approximately 140 pounds and is left hand dominant.

(11) Claimant alleges multiple orthopedic conditions (including the above-referenced left shoulder impairments), in combination with breathing problems and chronic migraine headaches, cause him to be physically incapable of performing sustained gainful employment activities.

(12) Claimant's July 2008 cervical MRI scan (taken in the disputed application month) verifies the existence of a previous four level fusion (C4-C7), with moderate to severe disc space narrowing at C6-C7 below the fusion and mild disc bulging/ostophyte formation throughout the remaining levels [REDACTED], pg 1).

(13) A September 15, 2008 treatment note verifies mild breathing restrictions not uncommon for someone with a tobacco abuse history; however, a moderate lung obstruction was noted, and also, claimant's [REDACTED] PET scan results revealed a lung mass which was concerning because of claimant's significant past asbestos exposure with recurrent right-sided pleuritic chest pain of at least one year's duration ([REDACTED] outpatient records).

(14) According to an independent medical examination conducted in May 2009 by [REDACTED], claimant was advised to undergo an open lung biopsy to rule out lung cancer but he had not done so due to financial constraints, which also is why he was unable to undergo the recommended left shoulder total arthroplasty referenced in Finding of Fact #7 above.

(15) As of claimant's May 12, 2009 hearing date, none of the pain medications which had been prescribed were effective in controlling claimant's chronic pain.

(16) Claimant's secondary symptoms include chronic fatigue due to unrestful sleep precipitated by pain, ongoing nausea/depression, intermittent migraine headaches, significant upper extremity range-of-motion limitations and chronic shortness-of-breath upon minimal exertion.

(17) In June 2008, claimant's orthopedic surgeon restricted claimant's lifting to less than a sedentary exertional level, and also, in September 2008, claimant's treating pulmonary function specialist verified his concern regarding claimant's lung mass and confirmed further medical work-up was imperative (Department Exhibit #1, pgs 13 and 14)(See also Finding of Fact #13 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).

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 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.

When determining disability, the federal regulations require several factors to be considered, including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitations in light of the objective medical evidence presented. 20 CFR 416.929(c)(94).

...In determining whether you are disabled, we will consider all of your symptoms, including pain, and the extent to which your symptoms can reasonably be accepted as consistent with objective medical evidence, and other evidence.... 20 CFR 416.929(a).

...Pain or other symptoms may cause a limitation of function beyond that which can be determined on the basis of the anatomical, physiological or psychological abnormalities considered alone.... 20 CFR 416.945(e).

...Since symptoms sometimes suggest a greater severity of impairment than can be shown by objective medical evidence alone, we will carefully consider any other information you may submit about your symptoms.... 20 CFR 416.929(c)(3).

...Because symptoms such as pain, are subjective and difficult to quantify, any symptom-related functional limitations and restrictions which you, your treating or examining physician or psychologist, or other persons report, which can reasonably be accepted as consistent with the objective medical evidence and other evidence, will be taken into account...in reaching a conclusion as to whether you are disabled.... 20 CFR 416.929(c)(3).

...We will consider all of the evidence presented, including information about your prior work record, your statements about your symptoms, evidence submitted by your treating, examining or consulting physician or psychologist, and observations by our employees and other persons.... 20 CFR 416.929(c)(3).

...We will consider your statements about the intensity, persistence, and limiting effects of your symptoms, and we will evaluate your statements in relation to the objective medical evidence and other evidence in reaching a conclusion as to whether you are disabled.... 20 CFR 416.929(c)(4).

...Your symptoms, including pain, will be determined to diminish your capacity for basic work activities...to the extent that your alleged functional limitations and restrictions due to symptoms, such as pain, can reasonably be accepted as consistent with the objective medical evidence and other evidence. 20 CFR 416.929(c)(4).

If you have more than one impairment, we will consider all of your impairments of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions as described in paragraphs (b), (c) and (d) of this section. Residual functional capacity is an assessment based upon all of the relevant evidence. This assessment of your capacity for work is not a decision on whether you are disabled but is used as a basis for determining the particular types of work you may be able to do despite your impairment. 20 CFR 416.945.

...We will consider whether there are any inconsistencies in the evidence and the extent to which there are any conflicts between your statements and the rest of the evidence, including your medical history, medical signs and laboratory findings, and statements by your treating or examining physician or psychologist or other persons about how your symptoms affect you.... 20 CFR 416.929(c)(4).

[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).

In claimant's case, the pain and other symptoms he describes are consistent with the objective medical evidence presented. Consequently, great weight and credibility must be given to his testimony in this regard.

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 at Step 1, because he is not currently employed and he has not been gainfully employed since 2004.

At Step 2, the objective medical evidence clearly shows claimant's symptoms have lasted the necessary durational period required to continue this inquiry into his alleged disability. Furthermore, claimant still experiences chronic, daily pain despite medication compliance.

At Step 3, claimant's impairments do not appear to rise to the level necessary to be specifically disabling by law; consequently, an analysis of his ability to engage in his past relevant work is required.

At Step 4, it is clear claimant cannot return to his past relevant work in medium exertional, unskilled level jobs. This conclusion is based not only on the objective medical evidence, but also on the credible testimony received at hearing. Most certainly, a return to this type of work would likely exacerbate claimant's pain and could result in additional injury or decline in claimant's already debilitated condition. Consequently, an analysis of Step 5 is required.

At Step 5, an applicant's age, education, work experience and residual functional capacity are assessed in relation to the documented impairments. However, these rules do not apply in cases where an applicant is found to have no residual functional capacity because he or she cannot perform even sedentary work as that term is defined at 20 CFR 416.967(a).

Under the facts and circumstances presented by this case, claimant has shown, by clear and convincing documentary evidence and credible testimony, his limitations are severe enough

to prevent from engaging in even sedentary work. Consequently, claimant meets the MA durational criteria and disability standards cited above. The department's finding to the contrary simply cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in determining claimant is not currently disabled for MA disability application purposes.

Accordingly, the department's decision is REVERSED, and it is Ordered that:

(1) The department shall process claimant's July 11, 2008 MA application and shall award him all the benefits to which he may be entitled, as long as he meets the remaining financial and non-fanancial eligiblity factors.

(2) The department shall review claimant's condition for improvement in March 2012, unless Social Security disability is awarded by that time.

(3) At review, the department shall obtain updated medical evidence from claimant's treating physician, ortheopedic specialist, pulmonary specialist, physical therapist, pain clinic notes, etc. regarding his continued treatment, progress and prognosis.

(4) The department also shall schedule claimant for another independent consulative physical examination at the time of review.

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

Date Signed: March 16, 2010

Date Mailed: March 17, 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

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