

STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg No. 200923666  
Issue No. 2009/4031  
Case No. [REDACTED]  
Load No. [REDACTED]  
Hearing Date: August 6, 2009  
Clare 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 the claimant's request for a hearing. After due notice, a telephone hearing was held on August 6, 2009. Claimant personally appeared and testified.

**ISSUE**

Did the department properly deny claimant's December 15, 2008 Medicaid (MA) and State Disability Assistance (SDA) application?

**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 single 47-year-old male with a general equivalency diploma (GED) who resides in a house his mother purchased in April 2008; before that, he lived in a mobile home on her property for many years.
2. Claimant has not been employed since "2006 or 2007," when he was installing cigarette machines in party and grocery stores part-time; he stopped due to self-reported pain and stiffness.
3. Claimant's only other relevant work history consists of landscaping/carpentry/warehouse janitorial (unskilled jobs).

4. On December 15, 2008, claimant filed a disability-based MA/SDA application based on reportedly debilitating pain across multiple body systems, which he alleges is so constant and severe it prevents him from engaging in any type of substantial gainful work activity.
5. On August 3, 2006, claimant also filed a disability-based Social Security application, on which he alleged impairments identical to those he now claims as disabling for MA/SDA eligibility purposes.
6. On December 29, 2006, the Social Security Administration (SSA) initially denied claimant's application; consequently, he filed a hearing request.
7. Claimant's SSA hearing was held on January 26, 2009, approximately one month after he filed the MA/SDA application on dispute herein.
8. While claimant's MA/SDA decision was pending, specifically on July 30, 2009, the SSA Administrative Law Judge issued an unfavorable decision denying disability status to claimant.
9. That decision was admitted as updated evidence received by this Administrative Law Judge on October 27, 2009, and it is fully incorporated by reference herein (See Notice Of Decision-Unfavorable, pgs 1-12).
10. Claimant stands approximately 5'10" tall and weighs approximately 215 pounds; he is right hand dominant, per self report.
11. Claimant is independent in all self cares; additionally, he has a valid driver's license/access to a roadworthy vehicle and he is capable of doing light housekeeping, grocery shopping and cooking (See SSA Unfavorable Decision, pg 6).
12. On January 20, 2009, claimant attended a physical examination in [REDACTED]; his gait was stable without assistive device, his straight leg raising was negative, his bilateral lower extremity strength tested at 4/5 and his sensation was fully intact to light touch without bruising or swelling noted (See Updated Medical Evidence submitted post-hearing).
13. [REDACTED] [REDACTED] [REDACTED] [REDACTED] were being prescribed to manage claimant's pain, with K [REDACTED] started to address his self-reported anxiety, described by the examining doctor as "mildly anxious."

14. As of claimant's MA/SDA hearing date (8/6/09), he reported taking [REDACTED] instead of [REDACTED], with [REDACTED] e added to his [REDACTED] and [REDACTED] initiated to address his recently-diagnosed fibromyalgia pain (12/08).
15. Additionally, on January 5, 2009, claimant's treating doctor summarized claimant's recent blood work (all normal) and some old left hip/bilateral wrist x-rays which did not evidence any severe injuries, but did reveal some remote subacute hand and foot fractures (right fifth metatarsal/second distal phalanx), plus an old compression deformity at T12 (See Updated Medical Evidence submitted post-hearing).
16. At that time, the doctor opined claimant had left hip bursitis since review of his hip x-ray was negative (See Updated Medical Evidence submitted post-hearing).

### **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).

Jurisdiction must be established for contested case review of departmental action before a decision on the merits of the case can be made. The applicable departmental policy states:

#### **Final SSI Disability Determination**

SSA's determination that disability or blindness does **not** exist for SSI purposes is **final** for MA if:

- . The determination was made after 1/1/90, **and**
- . No further appeals may be made at SSA, **or**

- . The client failed to file an appeal at any step within SSA's 60-day limit, **and**
- . The client is **not** claiming:
  - .. A totally different disabling condition than the condition SSA based its determination on, **or**
  - .. An additional impairment(s) or change or deterioration in his condition that SSA has **not** made a determination on.

Eligibility for MA based on disability or blindness does **not** exist once SSA's determination is **final**. PEM, Item 260, pp. 2 for a continuous period of not less than 12 months.... 20 CFR 416.905

This policy is also applied in SDA cases, because the MA, SDA and SSA disability definitions are identical, except for a shorter durational period for SDA.

The relevant federal regulations are found at 42 CFR Part 435. These regulations provide: "An SSA disability determination is binding on an agency until that determination is changed by the SSA." 42 CFR 435.541(a)(2)(b)(i). This regulation also provides: "If the SSA determination is changed, the new determination is also binding on the department." 42 CFR 435.541(a)(2)(b)(ii). These federal mandates are reflected in the policy item cited above (BEM Item 260).

The evidence of record in this case verifies claimant received a final SSA determination dated July 30, 2009. Claimant is alleging impairments identical to those the SSA judge has already reviewed. Consequently, under the above-cited regulation and state policy, no jurisdiction exists for this Administrative Law Judge to proceed on the merits of this case. The status quo must remain intact. The department's denial action must remain upheld.

In closing, this Administrative Law Judge finds claimant would not have prevailed on the merits of his case even if a substantive decision was required (which it is not). The applicable regulations state in relevant part:

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.

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.

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).

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).

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).

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).

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).

Even if this Administrative Law Judge proceeded to the very last step of the above-referenced sequential evaluation process in an effort to extend claimant every possible benefit of doubt, claimant would be determined not disabled at Step 5.

At Step 5, an applicant's age, education and previous work experience (vocational factors) must be assessed in light of the documented impairments. Claimant is a younger individual with a high school education and an unskilled work history. Consequently, at Step 5, this Administrative Law Judge finds, from the medical evidence of record, that claimant retains the residual functional capacity to perform at least sedentary work, as that term is defined above, in concurrence with the SSA's Hearing Decision issued on July 30, 2009 (See Finding of Fact #8 above). As such, claimant's December 15, 2008 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 denied claimant's disputed MA/SDA application.

Accordingly, the department's denial is AFFIRMED.

/s/

Marlene B. Magyar  
Administrative Law Judge  
for Duane Berger, Acting Director  
Department of Human Services

Date Signed: January 10, 2010

Date Mailed: January 10, 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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