

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: 2009-29128  
Issue No: 2009  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
September 10, 2009  
Oakland County DHS

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

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 hearing was held on September 10, 2009. Claimant appeared and testified.

ISSUE

Whether the department properly determined the claimant is not "disabled" for purposes of Medical Assistance (MA) program?

FINDINGS OF FACT

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

1. On December 11, 2008 the Claimant applied for MA-P and retro MA.
2. On February 3, 2009 MRT denied the Claimant's request for MA-P and retro.
3. On June 4, 2009 the Claimant submitted to the Department a request for hearing.

4. The Claimant is 47 years old.
5. The Claimant completed schooling up through 11<sup>th</sup> grade.
6. The Claimant worked in skilled labor as a plumber.
7. The Claimant suffers with degenerative changes throughout spine, evidence of prior surgery, mild compression deformity involving the superior endplate of L1 acute in nature, stenosis, impingement upon the neural foramen, MRSA,
8. The Claimant suffers with limited movement, muscle weakness, pain with movement, right hip and right leg pain from impingement, uses a walker to ambulate, problems walking can walk a few hundred feet using a walker can't walk without a walker, can't use right leg at all, can sit for about an hour, can lift under 5 lbs, struggles to open a bottle of pop, needs help dressing, uses a tool to assist putting pants on, uses a back brace, problems sleeping due to pain, fatigue and exhaustion, can't get comfortable, some trouble with constipation and due to medications, drowsy and headaches, loss of use of right leg due to back injury, arm weakness, weakness and numbness in hands and fingers, can stand for 10 minutes, falls down due to leg giving out, pain in hip, pain radiates from lower back down leg to knee, pain medication only dulls the pain.
9. The Claimant's limitations have lasted for 12 months or more.

#### 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 (formerly known as the Family Independence Agency) 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).

In order to receive MA benefits based upon disability or blindness, claimant must be disabled or blind as defined in Title XVI of the Social Security Act (20 R 416.901). The Department, being authorized to make such disability determinations, utilizes the SSI definition of disability when making medical decisions on MA applications. MA-P (disability), also is known as Medicaid, which is a program designated to help public assistance claimants pay their medical expenses.

The law defines disability as the inability to do substantial gainful activity (SGA) 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).

Because disability must be determined on the basis of medical evidence, Federal regulations have delineated a set order entailing a step sequential process for evaluating physical or mental impairments. When claimant is found either disabled or not disabled at any point in the process, the claimant is not considered further.

Addressing the following steps:

The first step to be consider is whether the Claimant can perform Substantial Gainful Activity (SGA) defined in 20 CFR 416.920(b). In this case, the Claimant is not currently working nor in the past year has the Claimant been employed. Therefore, the Claimant is not disqualified a this step in the evaluation.

The second step to be determined in considering whether the Claimant is considered disabled is whether the severity of the impairment. In order to qualify the impairment must be considered severe which is defined as an impairment which

significantly limits an individual's physical or mental ability to perform basic work activities. Examples of these include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, 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).

In this case, the Claimant's medical evidence of record supports a finding that Claimant has significant physical and mental limitations upon Claimant's ability to perform basic work activities such as understanding, carrying out, and remembering simple instructions; use of judgment; responding appropriately to supervision, co-workers, and usual work situations; and dealing with changes in a routine work setting. Medical evidence has clearly established that the Claimant has an impairment (or combination of impairments) that has more than a minimal effect on the Claimant's work activities. See Social Security Rulings: 85-28, 88-13, and 82-63.

In the third step of the analysis, the trier of fact must determine if the Claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the Claimant's medical record does support a finding that the Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR Part 404, Part A. Specifically listing 1.04 A.

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 clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for a 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. 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 416.927.

In this case, this Administrative Law Judge finds the Claimant maybe considered presently disabled at the third step for purposes of the Medical Assistance (MA) program and the Claimant appears to meet listing 1.04 A requirements. The Claimant's medical documentation supports the finding that the Claimant meets the requirements of the listing.

This Administrative Law Judge finds that the Claimant is presently disabled and for purposes of the Medical Assistance disability program as of October 2008.

#### DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Claimant is medically disabled as of October 2008.

Accordingly, the Department decision is hereby REVERSED and the Department is ORDERED to initiate a review of the application dated December 11, 2008, if not done previously, to determine Claimant's non-medical eligibility. The Department shall inform Claimant of the determination in writing. This case shall be reviewed in October 2010.

/s/ \_\_\_\_\_  
Jonathan W. Owens  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: 9/22/09 \_\_\_\_\_

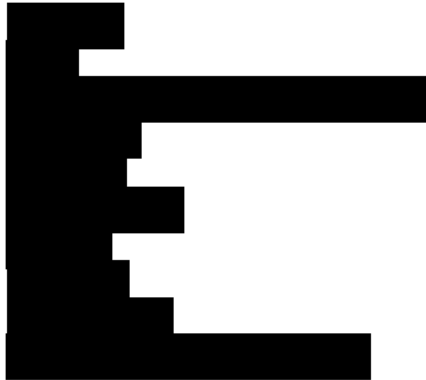
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**NOTICE:** Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or 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.

JWO/at

cc:

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