

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: 2009-30006

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

September 9, 2009

Ingham 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 September 9, 2009. Claimant and his adult daughter appeared and testified.

Additionally, he was assisted by [REDACTED]

ISSUE

Did the department properly determine claimant is not disabled by Medicaid (MA)/retro-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) On December 17, 2008, claimant's authorized representative applied for MA/retro-MA on claimant's behalf.

(2) When the department denied that application, claimant's authorized representative filed a timely hearing request.

(3) Claimant's hearing was held in-person on September 9, 2009, with continued assistance from his authorized representative.

(4) Claimant is a 48-year-old widower with a high school education and an extensive, unskilled work history in factory welding, but he has not been employed since November 2007, when his longstanding degenerative disc disease became too severe to continue due to chronic pain.

(5) In March 2008, claimant's lumbar spine MRI scan confirmed the presence of significant degenerative disc disease at multiple levels (Client Exhibit A, pgs 14-20).

(6) In October 2008, claimant spent two days in Ingham Regional Hospital for surgical repair of an L4-L5 disc herniation (with left-sided radiculopathy) via laminotomy after all conservative treatment methods failed (Client Exhibit A, pgs 16-17, 21 and 26-30).

(7) Claimant's chronic pain symptoms initially improved but worsened again by February 2009, consistent with his updated lumbar spine MRI scan (2/27/09) which verifies a new herniation at L5-S1 with nerve root encroachment and post-surgical scar tissue buildup at his former surgical site, as well as extensive disc desiccation throughout the lumbar area (Client Exhibit C, pgs 1 and 2).

(8) As of claimant's September 2009 hearing date (7 months post MRI update) claimant's chronic low back pain symptoms had not improved despite compliance with all medication and treatment modalities prescribed, including pain shots and electroshock therapy.

(9) By January 2010, claimant's lumbar spine impairments were complicated by a new injury, specifically, a right patella fracture which necessitated open reduction and internal

fixation (ORIF) on January 13, 2010, as verified by the post-hearing medical documentation his authorized representative submitted on February 25, 2010.

(10) Additionally, these records confirm a serious post-surgical recovery set-back due to development of MRSA, which required another hospitalization admission at the end of January 2010.

(11) At that time, claimant also was found to be suffering from post-operative anemia; one unit of packed red blood cells was suggested, according to claimant's updated medical records.

(12) Claimant's treatment follow-up notes, dated May 17, 2010, indicate high doses of prescription strength [REDACTED] were being prescribed, but claimant was getting no significant, long-term pain relief despite medication compliance.

(13) Claimant can no longer drive due to chronic pain, and also, he needs extensive assistance with many basic daily living activities provided by his adult daughter, with whom he lives.

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).

The levels of duration, intensity and chronicity of claimant's pain symptoms despite full compliance with his prescribed medication are consistent with the objective test results, hospital reports and treatment records contained within his file. Therefore, this Administrative Law Judge finds claimant's testimony highly credible in this regard, and thus, it must be given serious consideration.

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.

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).

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).

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).

Based on Finding of Fact #1-#13 above, this Administrative Law Judge answers:

Step #1: No.

Step #2: Yes.

Step #3: Yes. This Administrative Law Judge finds claimant's documented lumbar spine impairments meet Listing 1.04(A). As such, a finding of disabled must be rendered.

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 was not disabled at all times relevant to the filing of his December 17, 2008 MA/retro-MA application.

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

(1) Claimant's disputed application shall be reinstated and processed with benefits awarded as long as claimant meets the remaining financial and non-financial criteria necessary to receive them.

(2) Claimant's condition shall be reviewed for medical improvement in June 2012, unless Social Security Administration disability benefits are awarded by that time.

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

Date Signed: September 1, 2010

Date Mailed: September 2, 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

cc:

