

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: 2009-35339

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

November 3, 2009

Genesee 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 November 3, 2009. Claimant personally appeared and testified.

ISSUE

Did the department properly determine claimant is not disabled by Medicaid (MA) and State Disability Assistance (SDA) 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 56-year-old, left-handed male who completed 10th grade; he stands approximately 6'0" tall and weighs approximately 210 pounds, per self report.

(2) Claimant was a waste collector for the [REDACTED] for 12 years; he stopped working after being diagnosed with new onset insulin dependent diabetes in December 2007 (Department Exhibit #1, pgs 27-31).

(3) While driving the city's garbage truck on December 19, 2007, claimant's vision went blurry.

(4) Claimant was admitted to a local hospital through the Emergency Department where his blood sugar level was found to be over 800.

(5) Claimant was released the next day after receiving the standard medical instructions on correctly self-administering insulin (Department Exhibit #1, pg 12).

(6) Claimant reports he now tests his blood sugar levels several times daily and he administers his [REDACTED] as prescribed.

(7) On June 12, 2009, claimant applied for disability-based medical coverage (MA) and a monthly cash grant (SDA).

(8) When that application was denied claimant requested a hearing, held November 3, 2009.

(9) Claimant alleges disability based on chronic blurry vision, a periodically "wobbly" head secondary to being hit in 1980, and constant, debilitating pain in his back, neck, arms, hands, legs, feet, etc.

(10) Claimant alleges no severe mental/emotional/cognitive impairments and none are evidenced by the records submitted to date; however, claimant's treating physician has prescribed [REDACTED] for the anxiety and depression claimant has felt since being off work and being diagnosed with diabetes.

(11) Claimant lives alone in [REDACTED]; he is fully independent in all personal care and basic living activities, including driving.

(12) Claimant has a valid personal driver's license and access to a roadworthy vehicle; however, due to his diabetes diagnosis he is prevented from maintaining the C.D.L. certification necessary for continued work-related driving (See Finding of Fact #3 above).

(13) A lumbar spine x-ray taken in 2007 evidences only minimal degenerative disc disease at L4-L5-S1 (Department Exhibit #1, pg 34).

(14) Although claimant alleges he has severe rheumatoid arthritis, none of the objective medical records or test results submitted to date confirm this condition.

(15) In January 2008, claimant got glasses (Department Exhibit #1, pg 13).

(16) At an independent physical examination in February 2008 claimant's visual acuity with glasses was 20/25 in the left eye and 20/30 in the right eye (Department Exhibit #1, pg 28).

(17) At this examination, claimant's stance/posture/gait were normal without the use of an assistive device (e.g., walker/cane/crutches) and he exhibited full range-of-motion in all joints except the knees, with mild tenderness expressed in his feet and hands, but no lower or upper extremity swelling was noted, and claimant's gross finger dexterity and hand grip strength were all normal (Department Exhibit #1, pgs 27-33).

(18) In March 2008, claimant underwent an independent physical residual capacity consultation for Social Security disability benefits which is completely consistent with the February 2008 physical examination referenced in Finding of Fact #16 and #17 above.

(19) This examining consultant stated in relevant part:

DIB CLAIM FOR A 55 Y/O MALE WHO IS ALLEGING
DISABILITY SINCE 12/19/07 DUE TO DIABETES, VISION,
DDD & R.A.....THE M/E SHOWS THE CLMT. WAS HOSP.
& TREATED FOR NEW ONSET OF IDDM IN

12/2007...CURRENT M/E SHOWS THE V/A IS INTACT AT 20/25 IN L. EYE & 2/30 IN R. EYE WITH SOME RETINAL CHANGES. THERE ARE DECREASED REFLEXES IN BIL. UPPER & LOWER EXT., BUT NO EVIDENCE OF ANY SIGNIFICANT MOTOR LOSS. BIL. GRIP STRENGTH IS 5/5 & DEXTERITY IS INTACT. THE CLMT'S COORDINATION, STANCE, POSTURE & AMBULATION IS NORMAL. THERE IS NO EVIDENCE OF ANY ATAXIA & GAIT IS STABLE WITH NO NEED FOR AMBULATION AIDS. CLMT. CAN SQUAT WITH SOME EFFORT, HEEL/TOE WALK & GET ON & OFF EXAM. TABLE WITHOUT DIFFICULTY. SLR & ROMBERG IS NEG.

THE CLMT. REPORTS SYMPTOMS OF FATIGUE, VISION LOSS, BACK PAIN & KNEE PAIN. THE CLMT. INDICATES HE IS ABLE TO CARE FOR HIS PERSONAL NEEDS & DOES HELP TO WATCH HIS GRANDCHILDREN, HELP CLEAN THE HOUSE, TAKE OUT THE GARBAGE & DO SNOW REMOVAL. CMLT. REPORTS HE DOES DRIVE HIS CAR TO STORE, DR. APPTS & PHARMACY AS NEEDED. CLMT. DOES NOT LIST ANY LIFTING WT RESTRICTIONS & REPORTS HE CAN WALK FOR APPROX 1 MILE. THE CLMT. REPORTS HE IS NOT ABLE TO WORK DUE TO CONSTANT FATIGUE & WEAKNESS FROM THE DIABETES & BACK PAIN. MDI IS ESTABLISHED, BUT THE CLMT'S RESTRICTIONS DESCRIBED WITH RESPECT TO INABILITY TO WORK ARE NOT SUPPORTED BY THE OBJ. M/E FINDINGS. FULL CREDIBILITY NOT ESTABLISHED (Department Exhibit #2, pgs 1 and 5).

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).

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 SDA program differs from the federal MA regulations in that the durational 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.

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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...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).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

...Evidence that you submit or that we obtain 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 your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

...In deciding whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive. 20 CFR 416.927(b).

After we review all of the evidence relevant to your claim, including medical opinions, we make findings about what the evidence shows. 20 CFR 416.927(c).

...If all of the evidence we receive, including all medical opinion(s), is consistent, and there is sufficient evidence for us to decide whether you are disabled, we will make our determination or decision based on that evidence. 20 CFR 416.927(c)(1).

...If any of the evidence in your case record, including any medical opinion(s), is inconsistent with other evidence or is internally inconsistent, we will weigh all of the evidence and see whether we can decide whether you are disabled based on the evidence we have. 20 CFR 416.927(c)(2).

...A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled. 20 CFR 416.927(e).

[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).

Additionally, Social Security Ruling 96-4p (SSR 96-4p) states in relevant part:

A "symptom" is not a "medically determinable physical or mental impairment" and no symptom by itself can establish the existence of such an impairment. In the absence of a showing that there is a "medically determinable physical or mental impairment" an individual must be found not disabled at Step 2 of the sequential evaluation process. No symptom or combination of symptoms can be the basis for a finding of disability, no matter how genuine the individual's complaints may appear to be, unless there are medical signs and laboratory findings demonstrating the existence of a medically determinable physical or mental impairment.

In addition, 20 CFR 404.1529 and 416.929 provide that an individual's symptoms, such as pain, fatigue, shortness of breath, weakness, or nervousness, will not be found to affect the individual's ability to do basic work activities...unless medical signs and laboratory findings show that there is a medically determinable physical or mental impairment(s) that could reasonably be expected to produce the symptom(s) alleged.

Claimant does not qualify for the MA/SDA coverage he seeks because he has not presented any objective medical records to establish the presence of a physical or mental condition supportive of a reason for his severe, chronic, pervasive and debilitating pain complaints or severe mental/emotional problems.

Furthermore, it must be noted the law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant's pain can be managed to the point where substantial gainful employment can be achieved, a finding of not disabled must be rendered. Claimant's current prescription medication schedule can reasonably be expected to provide adequate control of his diagnosed conditions, as long as that medication is taken as prescribed. Consequently, this Administrative Law Judge concludes claimant is fully capable of working in a wide variety of unskilled jobs currently existing in the national economy, which is the standard to be applied in disability determination cases. As such, claimant's June 12, 2009 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 determined claimant is not disabled by MA/SDA eligibility standards.

Accordingly, the department's action is AFFIRMED.

/s/

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

Date Signed: November 10, 2009


Date Mailed: November 16, 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 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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