

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: 2009-3684
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 24, 2009
St. Clair County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

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 February 24, 2009. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and State Disability Assistance (SDA)?

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 April 7, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On August 25, 2008, the Medical Review Team denied claimant's application stating that claimant could perform his prior work.

(3) On August 29, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On October 22, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On November 13, 2008, the State Hearing Review Team again denied claimant's application stating that claimant's impairment is non-severe per 20 CFR 416.920(c) stating that currently there is no evidence of recurrence of the prostate cancer post-operatively. There was no evidence of metastasis to other organs/systems.

(6) Claimant is a 62-year-old man whose birth date is [REDACTED]. Claimant is 5' 10" tall and weighs 220 pounds. Claimant recently gained 40 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills.

(7) Claimant last worked as an over-the-road truck driver for 30 years.

(8) Claimant alleges as disabling impairments: prostate cancer.

CONCLUSIONS OF LAW

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).

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

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).

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

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).

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).

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).

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).

At Step 1, claimant is not engaged in substantial gainful activity and has not worked for approximately a year. Therefore, claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant has urinary retention due to prostate cancer. Claimant was diagnosed with prostate cancer in [REDACTED]. He subsequently had a zoladex implant which is performed every three months. On [REDACTED] [REDACTED] his physical exam showed that claimant's immediate, recent and remote memory is intact with normal concentration. The claimant's insight and judgment are both appropriate. The claimant provided good effort during the examination. Claimant's blood pressure in his left arm was 140/80, his pulse was 72 and regular, his respiratory rate was 16 and his weight was 215 pounds and his height was 69 inches without shoes. Claimant's skin was normal. Claimant's visual acuity in the right eye was 20/20 and in the left eye was 20/20 with corrective lenses. Pupils were equal, round and reactive to light. The claimant could hear conversational speech within limitation or aids. His neck was supple without masses. Breath sounds were clear to auscultation and symmetrical. There was no accessory muscle use. There was regular rate and rhythm without enlargement of the heart. There was a normal S1 and S2. In the abdomen there was no organomegaly or masses. Bowel sounds were normal. In his vascular system, there was no clubbing, cyanosis or edema detected. The peripheral pulses were intact. In the musculoskeletal area there was no evidence of joint laxity, crepitus or effusion. Grip strength

remained intact. Dexterity was unimpaired. The claimant could pick up a coin, button clothing and open a door. The claimant had no difficulty getting on and off the examination table, no difficulty heel and toe walking, no difficulty squatting and no difficulty hopping. Range of motion of the joints was full. Cranial nerves were intact. Motor strength and tone were normal. Sensory was intact to light touch and pin prick. Reflexes were intact and symmetrical. Romberg testing was negative. The claimant walked with a normal gait without the use of an assistive device. Claimant did have prostate cancer and his physical exam was unremarkable but he is waiting for possible surgery for the prostate cancer. On a [REDACTED] report from [REDACTED] [REDACTED] indicates that metastatic evaluation including bone scan and CT scan failed to demonstrate any extra prostatic disease of measurable volume. The claimant's prostate gland was in excess of 170 cc which may have impact as to treatment selections that are appropriate in the management of his prostate cancer. Claimant was unable to have inpatient care delivered in the management of his prostate cancer as governed by his insurance. As a result his options for radical prostate surgery would be quite limited unless there is some change or amendment to his insurance coverage. His prostate gland size being in excess of 170 cc would make him a poorly suited candidate for Brachytherapy or cryo surgical therapy. This would leave the option of external beam radiation therapy, which could be concluded on an outpatient basis under the umbrella of LH-RH agonist therapy with reasonable expectation of a cure.

At Step 2, claimant has the burden of proof of establishing that he has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. Claimant was diagnosed with prostate cancer in [REDACTED] and has been receiving radiation treatments which are scheduled to end in [REDACTED]. The issue is whether claimant is disabled under Sections 216(i), 223(d) and 1614(a)(3)(A) of the Social Security Act. Disability

is defined as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment or combination of impairments that can be expected to result in death or that has been expected or can be expected to last for a continuous period of not less than 12 months.

At Step 2, this Administrative Law Judge finds that claimant does have a severe impairment which has lasted the continuous period of 12 months and could be expected to result in death if not properly treated. Therefore, claimant is not disqualified from receiving disability at Step 2.

At Step 3, claimant's impairments do not rise to the level necessary to be considered disabling as a matter of law.

At Step 4, claimant testified on the record that he can walk 100 yards to 250 yards, stand for 10 minutes at a time and sit all day long. Claimant testified that he can shower and dress himself and can squat but cannot get up. Claimant testified that he can bend at the waist and tie his shoes but not touch his toes. Claimant testified that he can carry 10 to 15 pounds repetitively and that he is right handed and that his hands and arms are fine and his legs and feet are fine. Claimant testified that his level of pain on a scale from 1 to 10 without medication is a 4 to a 5 and with medication is a 2. Claimant testified that he stopped smoking approximately two months ago. Claimant testified that he does have a hernia and that he can do no straining in his stomach muscles and he can't pass the [REDACTED] physical so he cannot go back to work. Claimant testified that he does have prostate cancer and a hernia on the right side and that he does have some short term memory loss and loss of motivation based upon the treatment that he is taking that causes weakness, weight gain, short term memory loss, loss of

muscle tone, hot flashes and night sweats. This Administrative Law Judge finds that claimant is not disqualified from receiving disability at Step 4.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

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).

This Administrative Law Judge finds that claimant can probably perform sedentary work even with his impairments. However, based upon the fact that claimant is advanced age at age 62, with a high school education and skilled or semi-skilled work skills not transferable, claimant is considered disabled pursuant to Medical-Vocational Rule 201.06. An assessment of the claimant's residual functional capacity in terms of his age, education and work experience directs the decision that he is disabled at this time.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has not established by the necessary, competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that claimant did not meet the definition for disabled for purposes of Medical Assistance and State Disability Assistance benefits. The Administrative Law Judge finds that the claimant meets the definition of medically disabled under the Medical Assistance and State Disability Assistance programs as of the April 7, 2008 application date.

Accordingly, the department's decision is REVERSED.

The department is ORDERED to reinstate claimant's April 7, 2008 Medical Assistance and State Disability Assistance application and if claimant is otherwise eligible, the department is ordered to open an ongoing Medical Assistance and State Disability Assistance benefit case effective April 7, 2008. The department is ORDERED to pay to claimant any benefits to which he is entitled under the circumstances.

The department is also ORDERED to assist claimant in directing him to the appropriate agency so he can file for the appropriate Social Security benefits. Based upon claimant's age, this

Administrative Law Judge finds that there should not be a review of claimant's medical condition.

/s/

Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: March 23, 2009

Date Mailed: March 24, 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 mailing 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.

LYL/vmc

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