

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: 2009-374
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 22, 2009
Roscommon 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, a telephone hearing was held on January 22, 2009. Claimant personally appeared and testified.

ISSUE

Did the department properly determine that claimant is not disabled by Medicaid (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) Claimant is a divorced, 55-year-old Army veteran and former National Guardsman who continues residing with his ex-wife despite their divorce approximately 20 years ago.
- (2) Claimant has a general equivalency diploma (GED).

(3) Claimant was a tank repairman until April, 2003; after that, claimant worked as an [REDACTED] security guard for over two years until he was fired in 2005 for piling the company car into a dumpster (Department Exhibit #1, pg 7).

(4) Since then, claimant has been the caregiver for his disabled ex-wife; he shares these responsibilities and the basic home chores (shopping, cooking, cleaning, etc.) with his adult daughter.

(5) Claimant's monthly Social Security disability checks ended in December, 2007, when he was deemed no longer disabled; consequently, a reapplication for claimant's Michigan Medicaid (MA) was required (Department Exhibit #1, pg 1).

(6) On March 18, 2008, claimant filed this reapplication.

(7) On September 3, 2008, the department denied the application (Department Exhibit #1, pg 75).

(8) Claimant alleges he is disabled due to leg pain, neck pain, seizures and headaches.

(9) Claimant has a valid driver's license (no medical restrictions) and access to a roadworthy vehicle.

(10) Claimant takes Geodon for petite mal seizure management; his sporadic, brief episodes of "staring" have lessened since he started using this medication, per self report.

(11) An EEG report (brain) dated August 11, 2008 notes findings within normal variation (Department Exhibit #1, pg 32).

(12) Claimant's May, 2007 head CT scan also was normal, as was an EEG done that same year (Department Exhibit #1, pgs 18 and 21).

(13) Claimant established treatment with a new family practice provider in May, 2007 (Department Exhibit #1, pg 18).

(14) Claimant reported chronic neck and back pain; consequently, a lumbar spine MRI and cervical x-rays were done.

(15) Claimant's February 20, 2008 medical report indicates the MRI showed diffuse degenerative changes (arthritis) most severe at L3-4, with a small right-sided disc herniation; the cervical x-rays showed spondylosis and narrowing at C5-6 (Department Exhibit #1, pg 21).

(16) Electrodiagnostic studies of claimant's lower extremities are consistent with polyneuropathy, which would account for claimant's reported bilateral leg and feet numbness/tingling, but there was no evidence of lumbar plexopathy, mononeuropathy or myopathy (Department Exhibit #1, pg 21).

(17) Claimant's only prescription medications as of his January 22, 2009 hearing date were a water pill, an 81 mg baby aspirin, and the Geodon referenced in Finding of Fact #10 above.

(18) Claimant is a chronic smoker (30+ years) with a COPD diagnosis; smoking cessation has been medically advised (Department Exhibit #1, pgs 19, 20, 24, 26, 27 and 69B).

(19) A Medical Examination Report (DHS-49) dated April 22, 2008 confirmed a "few bilateral wheezes;" claimant's blood pressure was 106/62 (Department Exhibit #1, pg 12).

(20) Claimant stands approximately 6'1" tall and weighs approximately 180 pounds (Department Exhibit #1, pg 12).

(21) In March, 2008, claimant underwent Myoview exercise stress testing which revealed a 54% ejection fraction (normal); furthermore, no ischemia or wall motion abnormalities were detected (Department Exhibit #1, pgs 67 and 68).

(22) In March, 2008, claimant underwent a full scale neurological evaluation (Department Exhibit #1, pgs 29-31).

(23) The results of that evaluation are as follows:

The patient is awake, alert, and oriented X 3. Speech is fluent. There is no dysphasia or dysarthria. Naming and repetition are intact. Cognition, memory, general fund of knowledge, concentration and comprehension are intact to casual conversation. There is no facial asymmetry. Facial sensation is intact to light touch and temperature. Pupils are equally round and reactive to light and accommodation. Extraocular movements are full. Visual fields are full to finger confrontation exam. Fundoscopic exam reveals normal fundi bilaterally. Hearing is intact to finger rub. Tongue protrudes in midline and palette elevates symmetrically. Peripheral pulses are easily palpable. Motor exam reveals normal tone in both lower and upper extremities. There is no rigidity. Strength is full, 5/5 in both upper and lower extremities. There is no fix or pronator drift. Sensory exam reveals decreased light touch, temperature and vibration sense in both lower extremities in a stocking distribution. Sensation is intact in the upper extremities. Deep tendon reflexes are 1+ symmetrically in both upper extremities and I did not elicit any DTRs in the lowers. Plantar response is flexor bilaterally. Coordination exam reveals no dysmetria, dysdiadochokinesia, or ataxia. Finger-to-nose and heel-to-shin tests are intact. There is no resting or postural tremor. Gait is steady with wide base. Posture is intact (Department Exhibit #1, pg 30).

(24) The examining neurologist confirm polyneuropathy, but because the dysesthesias related to it did not seem to be a major complaint for claimant, he held off prescribing Lyrica (Department Exhibit #1, pg 29)(See also Finding of Fact #16 and #17 above).

(25) When the department denied claimant's disability reapplication, he filed an appeal dated September 11, 2008.

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.

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).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

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).

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).

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).

Claimant is not disqualified from receiving MA at Step 1, because he has not been gainfully employed since 2005 (See Finding of Fact #3 above).

At Step 2, claimant's diagnosed physical impairments, in combination, have lasted the requisite durational period (12 months) necessary to continue this analysis. However, it must be noted no severe mental impairments have been shown, and all claimant's physical conditions appear capable of adequate management with the medications currently being prescribed.

At Step 3, the medical evidence on this record does not support a finding that claimant's diagnosed impairments, standing alone or combined, are severe enough to meet or equal any specifically listed impairments; consequently, the analysis must continue.

At Step 4, claimant's security guard work is posted at the sedentary/light exertional level according to the Department of Labor's Dictionary of Occupational Titles. In reviewing the

diagnoses, severity and treatment modalities being utilized in claimant's case, she finds the record supports the conclusion he is fully capable of returning to that type of employment, or to any other unskilled light or medium or exertional jobs currently existing in the national economy, as those terms are defined above.

Claimant is independent in all activities of daily living. Additionally, he is physically capable of being a full-time caregiver for his wheelchair bound ex-wife, despite his diagnosed impairments. Lastly, the reason claimant left his security job is completely unrelated to any of the impairments he now alleges as disabling; consequently, it cannot be used to support onset, duration or severity in claimant's case. As such, claimant's disputed application must remain denied at Step 4 of the above-referenced sequential evaluation process, based on the ability to perform past work.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides claimant is not disabled by MA disability 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: _____

Date Mailed: _____

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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