

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: 2009-4823
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 8, 2009
Muskegon 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 April 8, 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 divorced, 46-year-old smoker (3 packs per week) with a polysubstance abuse history (i. e., [REDACTED] and a felony record who filed a disability-based MA/SDA application on his most recent prison incarceration out-date, that being June 3, 2008.

(2) When the department denied that application claimant filed a hearing request to dispute the denial; his hearing was held on April 8, 2009.

(3) At the hearing, the department provided verification which conclusively establishes the Social Security Administration (SSA) denied claimant's April 24, 2008 federal disability application after hearing by written decision issued on November 5, 2009 (Department Exhibit #3, pgs 1-16).

(4) Claimant alleged impairments on his Social Security disability application identical to those he now relies on to support his MA/SDA disability claim.

(5) Specifically, claimant's diagnoses include: (1) Affective and Anxiety Disorders; (2) Left Knee Osteoarthritis; (3) Post Surgical Left Shoulder Pain; (4) Hepatitis C; (5) Chronic Obstructive Pulmonary Disease (COPD); (6) Gastroesophageal Reflux Disorder (GERD); (7) High Blood Pressure; and (8) Obesity (Department Exhibit #3, pg 6).

(6) The documentary evidence submitted to date fails to confirm claimant ever appealed the SSA's hearing denial.

(7) While incarcerated, claimant was assigned a part-time groundskeeping job.

(8) Upon his prison release, [REDACTED] accepted claimant into their program and he was planning to start a five week, small business course with their assistance, per his hearing testimony.

(9) Claimant also reported his polysubstance abuse has been in sustained remission since completing inpatient treatment at [REDACTED] in November 2008 (Department Exhibit #3, pg 9; Client Exhibit A, pg 126).

(10) Claimant lives alone and he is fully independent in all self cares and basic daily living activities.

(11) Claimant has a general equivalency diploma (GED); additionally, he received some training in prison on welding techniques.

(12) After claimant got out of prison he reinitiated outpatient [REDACTED] treatment and he reported at hearing the doctor there placed him on a psychotropic medication schedule which includes [REDACTED] r and [REDACTED] (Client Exhibit A, pgs 81-135).

(13) Claimant's other prescription medications as of the hearing date were a blood pressure regulator ([REDACTED] for GERD and [REDACTED] as needed for self-reported pain symptoms.

(14) Claimant stands approximately 5'9" tall and is morbidly obese at approximately 290 pounds (BMI=42.8); he is right hand dominant, per self report.

(15) Claimant's past relevant work history is made-up of primarily unskilled, sporadic, general labor jobs (i. e., construction/home repair), but he has not been gainfully employed since 2002.

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).

Jurisdiction must be established for a contested case review of departmental action before a decision on the merits of the case can be made. The applicable departmental policy states:

Final SSI Disability Determination

SSA's determination that disability or blindness does **not** exist for SSI purposes is **final** for MA if:

- . The determination was made after 1/1/90, **and**
- . No further appeals may be made at SSA, **or**
- . The client failed to file an appeal at any step within SSA's 60-day limit, **and**
- . The client is **not** claiming:
 - .. A totally different disabling condition than the condition SSA based its determination on, **or**
 - .. An additional impairment(s) or change or deterioration in his condition that SSA has **not** made a determination on.

Eligibility for MA based on disability or blindness does **not** exist once SSA's determination is **final**. PEM, Item 260, pp. 2-3.

This policy is also applied in SDA cases, because the MA/SDA and Social Security disability definitions are identical, except for a shorter durational period for SDA (90 days).

The relevant federal regulations are found 42 CFR Part 435. These regulations provide: "An SSA disability determination is binding on an agency until that determination is changed by the SSA." 42 CFR 435.541(a)(2)(b)(i). This regulation also provides: "If the SSA determination is changed, the new determination is also binding on the department."

42 CFR 435.541(a)(2)(b)(ii). These federal mandates are reflected in the department's policy at BEM Item 260.

The evidence of record in this case does not support a finding that claimant had a pending appeal relative to his SSA disability denial as of the April 8, 2009 MA/SDA hearing date. Consequently, this case could be dismissed for lack of jurisdiction. However, in the event that said appeal does exist, and giving claimant every benefit of doubt, this Administrative Law Judge will proceed on the merits of his case.

It must be noted Michigan administers the federal MA program. In assessing eligibility, Michigan defers to the federal guidelines. These guidelines also are applied in SDA cases. The guidelines state in relevant part:

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).

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).

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).

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial gainful activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

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/SDA at Step 1, because he has not been gainfully employed since 2002 (See Finding of Fact #15 above).

At Step 2, claimant's diagnosed impairments, in combination, have left him with some exertional and non-exertional limitations. However, this Administrative Law Judge finds the persistence, intensity and limiting effects claimant endorses are not substantiated by the objective medical evidence presented, and thus, this Administrative Law Judge finds claimant's statements in this regard less than credible and most likely uttered for secondary gain (a disability allowance), in concurrence with the Social Security's decision dated November 5, 2009 (Department Exhibit #3, pg 9). Furthermore, if an applicant's symptoms can be managed to the point where substantial gainful employment can be achieved, a finding of not disabled must be rendered. Claimant's symptoms appear fully capable of adequate stabilization and management as long as medication compliance is maintained. Nevertheless, these impairments meet the *de minimus* level of severity and duration required for further analysis under *Higgs v Bowen*, 880 F2d 860, 862(6th Cir, 1988). As such, this analysis will continue.

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, this Administrative Law Judge finds claimant's past heavy construction/home repair activities are not capable of continuation given claimant's diagnosed physical impairments. This Administrative Law Judge agrees with claimant's contention that these activities are likely to exacerbate his pain or cause additional injury. Consequently, ruling again in claimant's favor, this Administrative Law Judge finds claimant may not be found capable of returning to his past relevant work. As such, this analysis must continue.

At Step 5, an applicant's age, education and previous work experience (vocational factors) must be assessed in light of the documented impairments. Claimant is a younger individual with a high school equivalency education and an unskilled work history. Consequently, at Step 5, this Administrative Law Judge finds, from the medical evidence of record, that claimant retains the residual functional capacity to perform light or sedentary work, as those terms are defined above. Put simply, claimant is not disabled under the MA/SDA definitions even if a substantive analysis was required, because he can return to other work, as directed by Medical-Vocational Rules 201.21 and 202.20. As such, claimant's June 3, 2008 disability-based 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 denied claimant's disputed application.

Accordingly, the department's action is AFFIRMED.

/s/

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

Date Signed: March 16, 2010

Date Mailed: March 16, 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:

