

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. Nos: 2009-708
2008-20318

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Dates:

November 12, 2008

September 30, 2008

Jackson 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 requests for hearings. Initially, a telephone hearing was held on September 30, 2008. Claimant attended unrepresented. Subsequently, an in-person hearing was held on November 12, 2008, at which, claimant was represented by [REDACTED]

[REDACTED]

represented the department at both hearings.

ISSUE

Did the department properly determine claimant is not disabled by Medicaid (MA)/retro-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 unemployed male who has filed multiple disability-based applications (MA/SDA) at Jackson Department of Human Services (DHS) which span several years.

(2) All these applications allege identical mental and physical impairments, in combination, prevent claimant from engaging in any type of substantial gainful work activity.

(3) On November 12, 2008, an in-person hearing was held to address the denial of claimant's December 17, 2007 MA/retro-MA/SDA application which was filed by claimant's authorized representative, [REDACTED].

(4) A patient advocate from [REDACTED] attended that hearing and assisted claimant in the presentation of his case.

(5) One month earlier, in September 2008, claimant attended a telephone conference hearing without representation to protest the department's denial of an application he filed independently on April 3, 2008.

(6) For purposes of this Hearing Decision, the medical evidence submitted at claimant's December 17, 2007 and April 3, 2008 disability application denial hearings was combined.

(7) Claimant is an unemployed male with a Special Education history who completed 11th grade.

(8) Claimant stands approximately 5'9" tall and is medially obese at approximately 260 pounds (BMI=38.4); he is right hand dominant.

(9) Claimant has an unskilled work history in various temporary services positions (driver/general labor)(Department Exhibit #1, pg 202).

(10) Claimant left his most recent janitorial job in April 2007 when the contract expired (Department Exhibit #1, pg 335).

(11) In September 2007, claimant suffered an acute myocardial infarction which required emergent angioplasty with mid-LAD stenting (Department Exhibit #1, pgs 265-278).

(12) Claimant's cardiac condition was stable on the standard post-infarction medications as of his September 30, 2008 hearing date, per self report.

(13) Claimant's personal opinion is consistent with an independent doctor's examination report prepared in February 2008, which notes claimant had normal heart rate/blood pressure and no symptoms upon exercise, no arrhythmias and no new EKG changes during his post-cardiac stress test done five months earlier (Department Exhibit #1, pg 313).

(14) Likewise, claimant's October 2007 echocardiogram showed normal LV function (Department Exhibit #1, pg 308).

(15) Claimant's medical history is positive for lower lumbar osteoarthritis (Client Exhibit B, pg 1 and Client Exhibit C, pg 7).

(16) Claimant's June 2006 thoracic and lumbar spine CT scan images verify no thoracic spine abnormalities or evidence of post-traumatic lumbar spine sequelae despite a June 2006 motor vehicle accident; only minimal L4-L5/L5-S1 degenerative changes with disc bulging but no nerve compression at L4-L5 were noted (Department Exhibit #1, pgs 109 and 110).

(17) Claimant has an intermittent history of self-initiated outpatient mental health counseling.

(18) An April 2007 physician's record states in relevant part:

He's had depression which is treated at [REDACTED] and degenerative arthritis of the knees. He hasn't been seen for several months. He is on no medication except occasional [REDACTED]. Complaints of right knee clicking, locking and giving way from time to time. He also complains of indigestion and epigastric burning. In the past, [REDACTED] was treating his depression with [REDACTED]. He had not been back for a long time and has [REDACTED] (Department Exhibit #1, pg 155).

(19) Claimant has been diagnosed with Borderline Personality Disorder and Major Depressive Disorder; by claimant's November 12, 2008 hearing date his [REDACTED] [REDACTED] had ended, but he was still taking [REDACTED] for mood management/stabilization with good results.

(20) At his September 30, 2008 hearing, claimant said he was looking for work with help from a job coach at [REDACTED].

(21) On July 29, 2008, claimant underwent an independent neuropsychological examination which concludes in relevant part:

...His verbal reasoning and comprehension skills are classified in the Borderline range while his nonverbal, visual-motor-spatial skills approach the high Average range...(Client Exhibit B, pg 2).

(22) This measured disparity between claimant's Verbal IQ (73) and Performance IQ (108) was noted to likely cause claimant considerable frustration and predispose him towards behavioral and emotional problems (Client Exhibit B, pgs 3 and 4).

(23) Additionally, claimant's audiotape format MMPI-2 test results were interpreted in the following manner:

...[Claimant] was vigilantly attentive to item content and clearly responded in a very deliberate manner. That is to say, he appears to have been quite invested in his approach to the self-report inventory rather than responding in a haphazard manner. Unfortunately, it is the case that he grossly exaggerated his complaints and difficulties, and from a psychometric perspective the profile is not valid. It is not possible to be entirely certain as to

the reasons for this gross exaggeration of his disturbance but the perception of secondary gain may loom large as at least some aspect of this. It appears that [claimant] is also exaggerating his somatic distress as well as his psychiatric disturbance, painting a score of 32 on the Fake Bad Scale (Client Exhibit B, pg 3).

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.

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.

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 the contract on his unskilled janitorial job ended in April 2007, five months before he had a heart attack (See Finding of Fact #10 and #11 above).

At Step 2, claimant's physical and mental impairments, in combination, have left him with some range of motion limitations, pain, depression and limited higher intellectual function. However, it must be noted claimant's cardiac condition, osteoarthritis and depressive symptoms appear fully capable of adequate control with his current medications, as long as medication compliance is maintained.

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 symptoms can be managed to the point where substantial gainful employment can be achieved, a finding of not disabled must be rendered. Nevertheless, claimant's medically managed, combined impairments meet the *de minimus* level of severity and duration required for further analysis.

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, the medical evidence supports the position that claimant's obesity, in combination with his lower lumbar and bilateral knee arthritis would make it difficult for him to return to full-time janitorial work because that type of work requires excessive walking, bending,

twisting, standing, etc. which might exacerbate claimant's pain and/or enhance arthritic degeneration. As such, this analysis must continue.

At Step 5, an individual'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 Special Education history through 11th grade. Additionally, he has 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 any number of light, unskilled jobs currently existing in the national economy, as that term is defined above. Therefore, claimant is not disabled under the MA/SDA rules, because he can return to other light work, as directed by Med-Voc Rule 202.17. Unfortunately for claimant, his disputed December 17, 2007 and April 3, 2008 disability applications shall remain denied in concurrence with the department's State Hearing Review Team (SHRT) decision dated December 9, 2008.

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 actions are AFFIRMED.

/s/

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

Date Signed: October 13, 2009

Date Mailed: October 14, 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.

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