

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: 2009-99
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 12, 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 request for a hearing. After due notice, an in-person hearing was held on November 12, 2008. Claimant and his mother personally appeared and testified.

Additionally, he was assisted by [REDACTED]

ISSUE

Did the department properly determine 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 right-handed, divorced, 44-year-old high school graduate with at least two years of post-secondary education in business studies and some computer experience, per self report.

(2) Claimant was employed in sales positions for more than 20 years; he left his last outside sales job in February 2008 when he was hospitalized and he has not been employed since.

(3) Claimant has lived with his parents since February 2008; he currently has a valid driver's license and access to a roadworthy vehicle.

(4) Claimant has been diagnosed with Bipolar Disorder, and also, he reports ongoing depression due to his circumstances (no job, no income, etc.).

(5) Claimant is fully independent in all self cares and basic daily living activities.

(6) Claimant is medically obese at 5'9" tall and 225 pounds (BMI=33.2); he continues to smoke despite medical advise against it (Department Exhibit #1, pgs 32 and 71).

(7) Claimant is an insulin dependent diabetic (controlled) and he has taken [REDACTED] "off and on" for years to manage gouty arthritis flare-ups (Department Exhibit #1, pgs 7 and 30).

(8) Claimant underwent a follow-up neurological consultation at [REDACTED] after his February 2008 hospitalization which states in relevant part:

[Claimant] is a 43-year-old man with minimal past medical history who presents today for evaluation of right hemiparesis. The patient's neurological examination is significant for some soft bilateral corticospinal tract findings and right hemiparesis that is worse distally than proximally, although it was confounded by variable effort in motor testing.

He was hospitalized at [REDACTED] and was discharged on 2/27/08 after 8 days of hospitalization. He tells me that during the hospitalization he had a bleeding ulcer, which was thought to have been due to daily [REDACTED] for gout...he tells me that he had at least 2 MRIs of the brain, an MRI of the spine,

carotid ultrasounds, ultrasounds of his right arm and leg, and CT scans. No diagnosis was made and he was specifically told that “no stroke” was seen on the brain imaging (Client Exhibit B, pgs 6 and 7).

- (9) This consulting neurologist subsequently reviewed claimant’s [REDACTED]

MRI brain scan and concluded:

In light of his imaging, examination at [REDACTED], and current clinical evaluation, I think a cerebrovascular etiology is quite unlikely. I only received a report and films of a single MRI brain which was performed a day into his symptoms per the [REDACTED] records. If a repeat MRI brain was not performed, I think this would be reasonable...(Client Exhibit B, pg 8).

- (10) Claimant was in [REDACTED] from February 28, 2008 to March 5, 2008

(Department Exhibit #1, pg 7).

- (11) Claimant’s discharge diagnosis was bleeding ulcers and erosive gastritis

(Department Exhibit #1, pgs 5-7).

- (12) Regarding the likelihood of an actual stroke occurrence while at [REDACTED], the

treating doctor stated:

MRI brain and C-spine are normal. The aspirin was stopped due to GI bleed. There is no clinical evidence of stroke at this time. He is improving, I don’t think any further neurologic testing is needed now. I indicated to him that I have not been able to come to a definitive diagnosis here and he seems a bit frustrated with this. A second opinion at an academic institution such as the [REDACTED] [REDACTED] is recommended (Department Exhibit #1, pgs 25)(See also Finding of Fact #8 and #9 above).

- (13) However, a subsequent MRI brain scan done on March 28, 2008, does verify a subacute infarct (stroke) involving the left medulla (Department Exhibit #1, pgs 75 and 76).

- (14) In April 2008, claimant was transferred from [REDACTED]

(4/22/08-4/30/08) due to dizziness, lightheadedness, right-sided pain and bloody stools

(Department Exhibit #1, pg 157).

(15) Claimant's discharge summary indicates he was diagnosed with Crohn's Disease during that hospitalization and the standard prednisone taper was initiated to control the Crohn's inflammation (Department Exhibit #1, pgs 157 and 158).

(16) In May 2008, claimant underwent an independent physical consultative examination which noted he used a cane for ambulation and exhibited some clumsiness of movement in his right upper and lower extremities (Department Exhibit #1, pg 164).

(17) Also in May 2008, claimant underwent an independent psychological evaluation where no severe mental, cognitive or emotional impairments were detected; claimant's Global Assessment Function (GAF) was 55 and he was assessed as socially and behaviorally within normal limits (Department Exhibit #1, pgs 159-161).

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).

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 at Step 1, because he has not been gainfully employed since 2008 (See Finding of Fact #2 above).

At Step 2, claimant's diagnosed physical impairments and stroke residuals, in combination, meet the *de minimus* standard necessary to continue this analysis. However, it must be noted no severe mental impairments have been shown, and claimant's high blood pressure, gout, diabetes and pain appears to be fully capable of adequate management with his current medications, as long as 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, in this case, claimant's medically managed physical impairments require further analysis as stated above.

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 record reveals claimant's outside sales job required excessive driving and repetitive lifting/carrying/loading/unloading of promotional products which likely exceeds his current capabilities given his right-sided weakness and range-of-motion limitations. 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 some post-secondary education and a semi-skilled 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 sedentary work, as that term is defined above.

Claimant's biggest barrier to employability appears to be his lack of recent connection to the competitive work force. Claimant should be referred to [REDACTED] [REDACTED] for assistance with job training and/or placement consistent with his skills, interests and abilities. Claimant is not disabled under the MA definitions, because he can return to other sedentary work, as directed by Medical-Vocational Grid Rule 201.21.

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 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 16, 2009

Date Mailed: November 17, 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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