

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: 2009-10270

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 26, 2009

St. Joseph County DHS

ADMINISTRATIVE LAW JUDGE: Jana Bachman

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 claimant's request for a hearing. After due notice, an in-person hearing was held on February 26, 2009. Claimant was represented by [REDACTED].

ISSUE

Whether claimant has established disability for Medical Assistance (MA).

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) June 27, 2008, claimant applied for MA and retroactive MA.
- (2) July 22, 2008, the Medical Review Team (MRT) denied claimant's application.

Department Exhibit A.

- (3) August 25, 2008, the department sent claimant written notice that the application was denied.

(4) November 20, 2008, the department received claimant's timely request for hearing.

(5) February 3, 2009, the State Hearing Review Team (SHRT) denied claimant's application. Department Exhibit B.

(6) February 26, 2009, the in-person hearing was held. Prior to the close of the record, claimant requested the record be left open for additional medical evidence. Claimant waived the right to a timely hearing decision. May 4, 2009, after review of all medical evidence, the SHRT again denied claimant's application. SHRT Decision, 5-4-09.

(7) Claimant asserts disability based on impairments caused by injuries to the cervical and lumbar spine.

(8) Claimant testified at hearing. Claimant is 50 years old, 5'8" tall, and weighs 190 pounds. Claimant completed 9<sup>th</sup> grade and is able to read, write, and perform basic math. Claimant has a driver's license and is able to drive. Claimant cares for his needs at home.

(9) Claimant's past relevant employment has been in construction.

(10) March 5, 2008, claimant underwent a physical examination that revealed claimant's spine to have positive right foraminal compression test (Spurling's). Treatment notes indicate that MRI of the cervical spine revealed foraminal narrowing at C5-6, C6-7, and C7-T1 with no obvious soft disc herniation. EMG shows a single denervation of the flexor carpi ulnaris and a minimalist line of the ulnar nerve at the elbow on the right, but no other signs of radiculopathy. Claimant complains of pain that has not responded to conservative therapy. Department Exhibit A, pgs 26-36.

(11) March 20, 2008, claimant underwent a right C6 hemilaminectomy and a right C5-C6, C6-C7, and C7-T1 foraminotomies. Claimant was discharged on March 22, 2008,

Department Exhibit A, pgs 24-25. On May 25, 2008, claimant's neurosurgeon indicates claimant is not yet released to return to work. Department Exhibit A, pgs 9-10. On August 7, 2008, neurosurgeon's progress notes indicate EMG of the right arm is normal; flexion-extension x-rays show no abnormal subluxation but do show degenerative changes. MRI of the cervical spine seems to show good foraminal decompression from C4-5 through C7-T1 on the right. There is no evidence of soft disc herniation. There is a fluid collection subadjacent to the lamina which has the appearance of an old, liquefied hematoma. It does not look like it is really causing any neural element compression. Patient complains that he has gotten no real relief from his discomfort following surgery. Claimant Exhibit A, pg 5. CT scan of the thoracic and lumbar spine, that took place in December 2008, revealed several mild disc bulges at T12-L1, L1-2, and L2-3. At L3-4 there is a degenerative retrolisthesis and a mild disc bulge noted, left greater than right foraminal stenosis, and at L4-5 a disc bulge and hypertrophic osteophyte with left lateral asymmetry approximating the exiting left L4 nerve root. Physical exam revealed marked decreased range of motion of the cervical spine, especially with rotation. Decreased strength in the right upper extremity was noted. Patient has some general trigger points and myofascial tenderness of the neck and upper back across the trapezes muscle. The same holds true for his lumbar spine. Surgical scar is well healed. He has generally good, pain free range of motion in the lumbar spine. Cranial nerves 2 through 12 are grossly intact. DTRs are symmetric. Sensation is decreased pinprick on the palmar surface of the third and fourth digits on the right. Sensation is grossly intact in the remainder of extremities. Motor strength is decrease in the right arm with possibly the biceps and triceps muscle. Grip strength is decreased on the right side. Claimant was to undergo pain treatment. Claimant Exhibit A, pgs B2-5. On February 21, 2009, claimant's neurosurgeon indicated that claimant's condition was stable. He was able to

occasionally lift 20 pounds, stand and/or walk at least 2 hours in an 8 hour workday. Sit less than 6 hours in an 8 hour workday, and perform grasping and fine manipulating with upper extremities. Claimant was able to operate foot and leg controls with both lower extremities. Claimant has no mental limitations. Claimant Exhibit A, pgs 1-2.

### 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

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).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

If an individual fails to cooperate by appearing for a physical or mental examination by a certain date without good cause, there will not be a finding of disability. 20 CFR 416.994(b)(4)(ii).

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 so is not disqualified from receiving disability at Step 1.

At Step 2, in March 2008 claimant underwent cervical neck surgery. Following surgery, he reported no relief from his pain. In August 2008, physical exam by the neurologist revealed claimant to have reduced range of motion and pain in the cervical spine. He has decreased strength in the right upper extremity and decreased sensation to pin prick in the palmar surface of his third and fourth digits on the right. Grip strength was decreased on the right side. Patient also has right lumbar radiculopathy with good range of motion in the lumbar

spine. He does have some general trigger points and tenderness. Claimant's neurologist opines that claimant is able to perform physical maneuvers that are consistent with sedentary work duties. Finding of Fact 10-11.

At Step 2, the objective medical evidence of record is not sufficient to establish that claimant has severe impairments that have lasted or are expected to last 12 months or more and prevent all employment for 12 months or more. Accordingly, claimant is disqualified from receiving disability at Step 2.

At Step 3, claimant's impairments do not meet or equal any Social Security Listing.

At Step 4, claimant's past relevant employment has been in construction. See discussion at Step 2 above. Finding of Fact 9-11. Claimant's cervical and lumbar spinal condition would appear to make it difficult for claimant to perform the heavy lifting, bending, and stooping required by his past relevant employment in construction.

At Step 4, the objective medical evidence of record is sufficient to establish that claimant has a severe impairment that has lasted or is expected to last 12 months or more and prevent him from performing the duties required by his past relevant employment. Accordingly, claimant is not disqualified from receiving disability at Step 4.

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).

**Heavy work.** Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

At Step 5, see discussion at Steps 2 and 4 above. Finding of Fact 10-11.

At Step 5, the objective medical evidence of record is sufficient to establish that claimant is capable of performing sedentary work activities. Considering claimant's Vocational Profile (closely approaching advanced age, limited education, and history of skilled/semi-skilled work-

skill not transferable) and relying on Vocational Rule 201.10, claimant is disabled. Therefore, claimant is not disqualified from receiving disability at Step 5.

Claimant meets the federal statutory requirements to qualify for disability. Therefore, claimant meets the disability requirements to qualify for Medical Assistance based on disability.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant has established disability for Medical Assistance.

Accordingly, the department's action is hereby reversed. The department is to initiate a determination of claimant's financial eligibility for Medical Assistance beginning with the earliest appropriate retroactive month prior to the month of application. If otherwise eligible, Medical Review is set for October 2011.

/s/ \_\_\_\_\_  
Jana Bachman  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: August 30, 2010

Date Mailed: August 31, 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 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.

JB/sd

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